CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 200

HARRY M. BLACKMER, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JULY 3, 1931

CERTIORARI GRANTED OCTOBER 19, 1931

(36,014)

(36,014)

SUPREME COURT OF THE UNITED STATES

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

INDEX

	Page
Proceedings in Court of Appeals of District of Columbia	1
Caption	1
Record from supreme court of District of Columbia	1
Petition for issuance of subpœnas under the Act of July 3, 1926	1
Order granting subpœnas	3
Petition of United States attorneys for rule in contempt, &c	4
Exhibit "A"—Subpœna in criminal cause No. 43324	7
Marshal's return; return of George Orr, consul	8
Certificate of Frank E. Cunningham, clerk	8
Exhibit "B"—Subpœna in criminal cause No. 43324	9
Marshal's return; return of Raymond Davis, consul	9
Certificate of Frank E. Cunningham, clerk	10
Exhibit "C"—Excerpt from proceedings	10
Order for appearance, &c	11
Marshal's return; return of service by George Orr, consul	12
Schedule of levy	13
Proof of publication; order	14
Return of marshal	15
Motion to vacate order	16

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 10, 1931

Page

Affidavit of George Gordon Battle in support of motion to vacate order: 18
Affidavit of Harry M. Blackmer 18
Order continuing hearing on motion and rule 19
Opinion of Justice Siddons on submission after hearing, &c 20
Decree overruling motion to vacate, &c 33
Plea 34
Joinder of issue on defendant's first plea 38
Demurrer to defendant's further pleas; note 38
Amended plea 39
Joinder of issue 51
Demurrer; note 51
Memorandum: Argument of case 52
Motion on pleadings for judgment 52
Opinion of Siddons, J 58
Decree; appeal noted 65
Memoranda: Undertaking on appeal (supersedeas), $500, approved and filed; time to file bill of exceptions extended; proposed bill of exceptions filed; notice of time of presentation and acknowledgment of service 66
Assignment of errors of defendant, Harry M. Blackmer 67
Designation of record 68
Memorandum: Bill of exceptions submitted 71
Order making bill of exceptions part of record 71
Clerk's certificate 71
Amended bill of exceptions 72
Order designating judge 87
Minute entries of argument and submission 87
Opinion, Robb, J 88
Decree 107
Clerk's certificate 108
Order allowing certiorari 109

Court of Appeals of the District of Columbia

No. 5131.

HARRY M. BLACKMER, Appellant,

vs.

UNITED STATES.

a Supreme Court of the District of Columbia.

Contempt. No. 16.

UNITED STATES, Plaintiff,

vs.

HARRY M. BLACKMER, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 In the Supreme Court of the District of Columbia,
Holding a Criminal Term.

In Contempt. No. 16.

UNITED STATES

vs.

HARRY M. BLACKMER.

Petition for Issuance of Subpœna under the Act of July 3, 1926.

Filed May 13, 1927.

In the Supreme Court of the District of Columbia.

Criminal. No. 43,324.

THE UNITED STATES

vs.

HARRY F. SINCLAIR and ALBERT B. FALL.

The petition of Peyton Gordon, United States Attorney in and for the District of Columbia, and of Atlee Pomerene

and Owen J. Roberts, Special Assistants to the Attorney General of the United States, respectfully represents:

1. The above captioned cause is set for trial before one of the Justices of your honorable Court on Monday, the 17th day of October, 1927. Your petitioners desire the attendance at the trial of the above captioned cause of James E. O'Neil and H. M. Blackmer. The said James E. O'Neil and H. M. Blackmer are citizens of the United States and are now beyond the jurisdiction of the United States, your petitioners being advised that they are, or both lately have been, in the Republic of France.

2. That your petitioners believe and therefore aver that the attendance of the said persons at the trial of the said cause is vital and important to the United States, because as your petitioners aver, they believe that the said witnesses have knowledge and information with regard to certain important facts which the United States desires to prove in the said cause, and that their testimony as to said facts will be material in connection with the establishment not only of the conspiracy charged between the defendants in the above captioned cause, but in connection with the proof of overt acts done by the defendants pursuant to said conspiracy. More particularly your petitioners believe and therefore aver that the said James E. O'Neil and H. M. Blackmer can testify to facts concerning the persons who were in the latter part of the year 1921 and during the year 1922 stockholders of the Continental Trading Company, Ltd., a corporation, and with regard to the distribution by that corporation to its stockholders of certain United States 3½% Liberty Loan bonds as dividends, certain of which bonds, as your petitioners believe and therefore aver, were subsequently delivered by or on behalf of one of the defendants, Harry F. Sinclair, to the other defendant, Albert B. Fall.

3. That your petitioners base this petition upon the provisions of an Act of Congress, being No. 483 of the 68th Congress, entitled "An Act relating to contempts", approved July 3, 1926.

Wherefore your petitioners pray that your honorable Court, or one of the Justices thereof, may order that subpœnas issue in this cause addressed to any Consul General or Consul of the United States within the Republic

of France, or within any country in which either of the said witnesses may be, commanding such witness to
3 appear before this Court in Criminal Court No. 2, at the City of Washington, D. C., on the 17th day of October, 1927.

And your petitioners further pray that your honorable Court, or the Justice entering the order upon this petition, fix the amount which shall be tendered to the said witnesses respectively for their necessary expenses in traveling to and from the City of Washington, D. C., where this honorable Court sits, and the expenses of his attendance upon the Court; and your petitioners respectfully represent that $500.00 is a proper sum to be fixed in that behalf.

And your petitioners will ever pray, etc.

PEYTON GORDON,
United States Attorney.
ATLEE POMERENE,
R.,
OWEN J. ROBERTS,
Special Assistants to the Attorney General.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Owen J. Roberts, having been duly sworn according to law, did depose and say that the facts set forth in the foregoing petition are just, true and correct to the best of his knowledge, information and belief.

OWEN J. ROBERTS.

Sworn to and subscribed before me this 13th day
4 of May 1927.

[NOTARIAL SEAL.]

CARLTON G. SCHENKEN,
Notary Public, D. C.

Order Granting Subpœnas.

Filed May 13, 1927.

* * * * * * *

Upon consideration of the petition of Peyton Gordon, United States Attorney in and for the District of Columbia,

and Atlee Pomerene and Owen J. Roberts, Special Assistants to the Attorney General of the United States, this day filed praying for the issuance of subpœnas under the Act of July 3, 1926, it is by the Court this 13th day of May, 1927, ordered:

1. That subpœnas issue as prayed for in the said petition, which subpœnas shall at the request of the petitioners be addressed to any Consul of the United States in the Republic of France, or in any other country where said witnesses may be ascertained to be, commanding said witnesses to be and appear before this court in Criminal Court No. 2 thereof, on the 17th day of October, 1927.

2. That the amount to be tendered to each of the said witnesses for his necessary expenses in traveling to and from Washington, D. C., and for his attendance at Court, is fixed and determined at $500.00.

WILLIAM HITZ,
Justice.

5 *Petition of United States Attorneys for Rule in Contempt, &c.*

Filed November 4, 1927.

* * * * * * *

And now comes Peyton Gordon, United States Attorney for the District of Columbia and Atlee Pomerene and Owen J. Roberts, Special Counsel for the United States of America and represent to the Court:

(1) That on the 13th day of May, 1927, they presented their petition to this Honorable Court in accordance with the Act of Congress of July 3, 1926, c. 762 (44 Stat. 835), for the issuance of subpœnas directed to one H. M. Blackmer, who was and is a citizen of the United States and domiciled and residing therein but temporarily sojourning in France, to appear before this Honorable Court on Monday, the 17th day of October, 1927, as a witness in the case of United States vs. Harry F. Sinclair and Albert B. Fall, Criminal No. 43,324, on the docket of this Court, and said petition now appears of record therein.

(2) That on said 13th day of May, 1927, this Honorable Court made an order based upon the said petition for the

issuance of said subpœnas (this Court's journal 78, page 229) and on the said day subpœnas duly issued in accordance with the terms of said Act of Congress directed to Consuls of the United States in foreign countries for service upon the said H. M. Blackmer.

(3) That said subpœnas commanded the said H. M. Blackmer to appear before this Honorable Court at a criminal term thereof in the City of Washington, District of Columbia, on the 17th day of October, A. D. 1927, at 10 o'clock A. M., to testify on behalf of the United States in said case, Criminal No. 43,324, and not depart the
6 Court without leave of the Court or District Attorney.

(4) That in the order aforesaid it was provided that upon the service of any of said subpœnas the Consul serving the same should tender to the said H. M. Blackmer the sum of $500.00, for his necessary expenses in traveling to and from the place at which said Court sits and his expenses in attendance thereat.

(5) That on the 27th day of May, 1927, George Orr, a Consul of the United States at Paris, in France, served one of said subpœnas upon the said H. M. Blackmer at Paris, France, by exhibiting the same to him and by delivering to him personally a true copy thereof; and said Consul at the same time tendered to him the sum of $500.00, in currency of the United States, as ordered by this Court.

That on the 7th day of June, 1927, Raymond Davis, a Consul of the United States at Paris, in France, served one of said subpœnas upon the said H. M. Blackmer at Paris, France, by exhibiting and reading the same to him and by delivering to him personally a true copy thereof; and said Consul at the same time tendered to him the sum of $500.00, in currency of the United States, as ordered by this Court.

That the said H. M. Blackmer refused to take the said moneys, or any part thereof.

(6) That the said Consuls above mentioned made due return of service of said subpœnas and of the tender of said money as aforesaid to the Clerk of this Honorable Court, as appears of record in said cause. True copies of said subpœnas and the returns thereof are hereunto attached marked respectively Exhibit A and Exhibit B, which copies are hereby made a part hereof.

7 (7) That the trial of said case, Criminal No. 43,-324, commenced in this Court at 10 o'clack, A. M., Monday, October 17, 1927, and proceeded until about 12:15 o'clock P. M., on said day when, pursuant to the request of Hon. Nathan Miller and George Gordon Battle, representing themselves to be attorneys for said H. H. Blackmer, special counsel requested the Court to have the clerk call said H. M. Blackmer as a witness; that the Court so instructed the clerk and the clerk called "H. M. Blackmer"; that said H. M. Blackmer did not respond to said call and neglected and refused to appear; and thereupon said Nathan Miller and George Gordon Battle appeared for said H. M. Blackmer and at the request of said H. M. Blackmer for the purpose of stating that the witness was not present in court and would not appear in answer to said subpœnas. A true transcript of said proceedings is hereunto attached, marked Exhibit C, and made a part hereof.

Wherefore the said Peyton Gordon, United States Attorney as aforesaid, and said Atlee Pomerene and Owen J. Roberts, Special Counsel as aforesaid, pray this Honorable Court to issue an order in accordance with Section 4, c. 762 of said Act of July 3, 1926, directing the witness to appear before said Court upon a day and at a time to be designated in such order to show cause why he should not be adjudged guilty of contempt and punished accordingly.

And they further pray that this Honorable Court will direct as a part of said order and in accordance with Section 5, c. 762, of said Act, that the property of said H. M. Blackmer within the United States of the amount and value of $100,000.00, or such other amount and value as to the Court may seem proper, be levied upon and seized by
8 the Marshal of said Court and held to satisfy any judgment that may be rendered against the said H. M. Blackmer in this proceeding.

And they further pray that this Honorable Court will direct as a part of said order and in accordance with Section 6, c. 762, of Said Act, that the Marshal upon having made such levy and seizure shall forward to the Consuls of the United States in any countries where said H. M. Blackmer may be a copy of said order for personal service upon said Blackmer and shall cause said order to be published

in a newspaper of general circulation in the District of Columbia once each week for six consecutive weeks.

And your petitioners will ever pray, etc.

PEYTON GORDON,
United States Attorney for the District of Columbia.
OWEN J. ROBERTS,
ATLEE POMERENE,
Special Counsel for the United States.

9 "EXHIBIT A."

Supreme Court of the District of Columbia.

No. 43324, Criminal Docket.

THE UNITED STATES

vs.

HARRY F. SINCLAIR AND ALBERT B. FALL.

The President of the United States to H. M. Blackmer, Paris, France:

You are hereby commanded to attend the said court on Monday, the 17th of October, 1927, at 10 o'clock A. M., to testify on behalf of the United States, and not depart the Court without leave of the Court or District Attorney.

Witness The Honorable Walter I. McCoy, Chief Justice of said Court, the 13th day of May, A. D. 1927.

[SEAL.] FRANK E. CUNNINGHAM,
Clerk,
By H. B. DERTZBAUGH,
Assistant Clerk.

10 [Endorsed:] Criminal No. 43324. United States vs. Harry F. Sinclair and Albert B. Fall. Summons for the United States. Criminal Court No. 2. To George Orr, Consul of the United States at Paris, France: By order of the Court, you are directed to serve the within subpœna and true return thereon to make to this Court. Frank E. Cunningham, Clerk Supreme Court of the District of Columbia.

Consul's Return.

Summoned personally all, the 27th day of May, 1927, between 5 P. M. and 5.15 P. M. at the usual residence of the witness, rooms 501-502-503, Hotel Plaze Atheneé, 25 Avenue Montaigue, Paris, France, and in the presence of Consul Raymond Davis and Mr. Henri Gadd, Attorney for the witness. The witness declined to accept the sum of $500 in United States currency tendered him for traveling expenses. The original copy hereof was left in the hands of the witness.

Not to be found:

[Seal of the American Counsulate General, Paris, France.]

GEORGE ORR,
Consul of the United States of America at Paris, France.

11 Supreme Court of the District of Columbia.

Criminal.

No. 43324.

THE UNITED STATES, Plaintiff,

vs.

HARRY F. SINCLAIR and ALBERT B. FALL, Defendants.

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, do hereby certify the annexed to be a true and correct copy of the original summons as it appears of record in the Clerk's Office of said Court in the above-entitled cause.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, this 3rd day of November, 1927.

[SEAL.] FRANK E. CUNNINGHAM,
Clerk,
By WILLIAM W. STICKNEY,
Assistant Clerk.

12 "EXHIBIT B."

Supreme Court of the District of Columbia.

Criminal Docket.

No. 43324.

THE UNITED STATES

vs.

HARRY F. SINCLAIR and ALBERT B. FALL.

The President of the United States to H. M. Blackmer, Paris, France:

You are hereby commanded to attend the said court on Monday, the 17th of October, 1927, at 10 o'clock A. M., to testify on behalf of the United States, and not depart the Court without leave of the Court or District Attorney.

Witness The Honorable Walter I. McCoy, Chief Justice of said Court, the 13th day of May, A. D. 1927.

[SEAL.] FRANK E. CUNNINGHAM,
Clerk,

By H. B. DERTZBAUGH,
Assistant Clerk.

13 [Endorsed:] Criminal No. 43324. United States vs. Harry F. Sinclair and Albert B. Fall. Summons for the United States. Criminal Court No. 2. To Raymond Davis, Counsul of the United States at Paris, France: By order of the Court, you are directed to serve the within subpœna and true return thereon to make to this Court. Frank E. Cunningham, Clerk Supreme Court of the District of Columbia.

Counsul's Return.

Summoned personally all, the 7th day of June, 1927, H. M. Blackmer, by exhibiting said subpœna personally to the said H. M. Blackmer, reading the same to him, and leaving a duplicate copy with him at Paris, France.

And I further certify that pursuant to the order of the Court I did at the time of said service tender to the said

H. M. Blackmer the sum of $500 currency of the United States of America, which tender the said H. M. Blackmer then and there refused.

Not to be found:

[Seal of the American Counsulate General, Paris, France.]

RAYMOND DAVIS,
Counsul of the United States of America at Paris, France.

14 Supreme Court of the District of Columbia.

Criminal.

No. 43324.

UNITED STATES, Plaintiff,

vs.

HARRY F. SINCLAIR, ALBERT B. FALL, Defendant-.

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, do hereby certify the annexed to be a true and correct copy of the original summons as it appears of record in the Clerk's Office of said Court in the above-entitled cause.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, this 3rd day of November, 1927.

[SEAL.] FRANK E. CUNNINGHAM,
Clerk.
By WILLIAM W. STICKNEY,
Assistant Clerk.

15 EXHIBIT "C."

Mr. Roberts: May I ask Your Honor to have the clerk call H. M. Blackmer, a witness subpœnaed under leave of this court and under act of Congress, to appear here this morning?

The Court: Call the witness.

The Clerk: H. M. Blackmer? (calling the witness.)

Mr. Miller: May it please the Court, I have been requested by Mr. Blackmer to appear especially for the purpose of explaining to the Court why he is not here, because he does not desire even to appear to flout or be disrespectful of the process of this court.

The Court: Let me interrupt you a moment. As I understand it you appear especially to tell the Court first that the witness is not here. Then you are about to state the reasons that he gives for his non-appearance?

Mr. Miller: Yes, Your Honor.

The Court: I rather think that would come better at a later time.

Mr. Roberts: Yes, I object to that. I haven't the slightest objection to Governor Miller, who represents Mr. Blackmer, appearing here and saying to Your Honor that he (Blackmer) is not here in answer to the subpœna and, we understand, will not be. I would like to have that fact duly noted upon the record. It seems to me that until the Government moves in the matter no further matter should be heard by the Court.

The Court: When I spoke a few moments ago I was under the impression that that was all that was necessary at this time.

16 Mr. Miller: May I request that if the Government does move in respect of the non-appearance of Mr. Blackmer that I be given notice and opportunity to be heard?

Mr. Roberts: Certainly. The Government will gladly accord that. If the Court permits Mr. Miller the privilege of appearing we will gladly accord him the privilege of being notified when we desire to make a motion.

The Court: The Court understood that you were about to submit a motion, Mr. Roberts.

Mr. Roberts: No, I am not, Your Honor. I wish the record merely to show the fact that the witness that has been called has not responded.

17 *Order for Appearance, &c.*

Filed November 16, 1927.

* * * * * * *

And now, November 16th, 1927, upon consideration of the petition heretofore filed by Peyton Gordon, United

States Attorney for the District of Columbia, Atlee Pomerene and Owen J. Roberts, Special Counsel for the United States of America, it is ordered as follows:

1. The said Harry M. Blackmer is hereby directed to appear before this Court on Friday, January 6, 1928, at ten o'clock A. M., to show cause why he should not be adjudged guilty of contempt and be punished accordingly.

2. That the property of the said Harry M. Blackmer within the United States, of the amount and value of $100,000, be levied upon and seized by the Marshal of this Court and held to satisfy any judgment that may be rendered against the said Harry M. Blackmer in this proceeding.

3. That the Marshal of this Court is hereby directed upon making such levy to forward to the Consuls of the United States at Paris, France, at Nice, France, and at any other places in France or in any other countries where the said Harry M. Blackmer may be, a copy of this order, with the request that such Consul or Consuls make service of the same personally upon the said Harry M. Blackmer; and further that the said Marshal shall cause this order to be published in The Washington Evening Star, a newspaper of general circulation in the District of Columbia once each week for six consecutive weeks, in accordance with the provisions of Section 6, c. 762, of the Act approved July 3, 1926, 44 Stat. 835.

By the Court:

F. L. SIDDONS,
Judge.

18 *Marshal's Return.*

I have this 19th day of November, 1927, executed the within order in the case of United States vs. Harry M. Blackmer by levying upon and seizing One Hundred Thousand ($100,000) Dollars in United States First Liberty Loan Bonds at the par value of $100,000, the property of the said defendant, Harry M. Blackmer.

EDGAR C. SNYDER,
U. S. Marshal in and for the District of Columbia.

Return of Service.

Served a true copy of the within order on the within-named Harry M. Blackmer by delivering said true copy.

personally to him on the fifth day of December 1927, at the Hotel Plaza Atheneé, Paris, France.

GEORGE ORR,
Consul of the United States at Paris, France.

Dec. 5, 1927. 14100. No. Fre Prescribed.
Ret. Docketed Mch. 17, 1928.
F. E. CUNNINGHAM, *Clerk.*
C.B.C.

19 Filed November 19, 1927.

* * * * * * *

Schedule of Levy Under.

Ninety-five (95) First Liberty Loan Bonds, $1,000 ea.

Ten (10) First Liberty Loan Bonds, $500 ea.

as follows:

(1,000.00 denominations.)			(500.00 denominations.)
5806	614071	888700	
5807	614072	1005452	
5808	614073	1005453	211054
5809	614074	1005454	211055
22933	614075	1005455	182009
41257	631401	1005456	214940
41258	631402	1005457	265573
41259	720213	1005458	278356
41260	720214	1005459	278362
41261	720215	1019999	282378
41262	720216	1020000	282379
41263	720217	1020157	282618
41264	720218	1020158	
41265	720219	1020159	
41266	720220	1020160	
49282	750021	1020443	
50976	750022	1020444	
91659	750023	888702	
96417	750024	888703	
96418	750025	888704	
96420	750026	509626	
96421	750027		

(1,000.00 denominations.)	(500.00 denominations.)
96422	843080
107930	860308
196887	860309
267999	860310
268153	860312
268154	888351
460999	888352
509627	888353
509628	888354
509629	888355
509630	888356
509631	888357
509632	888358
509633	888359
509634	888699

Computation.

Par Value	100,000.00
Appreciated Value	1,812.50
Accrued Interest	1,497.00
	103,309.50

We, the undersigned, citizens of the District of Columbia, having been duly summoned and sworn by the Marshal of said District, do hereby certify that we have appraised the property described in the foregoing schedule at One Hundred Three Thousand Three Hundred Nine 50/100 Dollars.

Given under our hands and seals this 19th day of November, 1927.

ADAM A. WESCHLER. [SEAL.]
G. C. COLLIFLOWER. [SEAL.]

20 *Proof of Publication.*

Filed March 17, 1928.

DISTRICT OF COLUMBIA, *ss:*

Personally appeared before me, Elmer F. Yount, a Notary Public in and for the District of Columbia aforesaid, W. R. Little, who being duly sworn according to law, on oath says that he is the Agent and Auditor of The Evening Star, a daily newspaper published in the City of Washington, District of Columbia, and that the advertisement, of which the annexed is a true copy, was published in said newspaper six times on the following dates: November 19, 26, 1927; December 3, 10, 17, 24, 1927, at a cost of fifty-nine 40/100 (59.40) dollars.

W. R. LITTLE.

Sworn and subscribed to before me Mar. 16, 1928.

[NOTARIAL SEAL.] ELMER F. YOUNT,
Notary Public.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.—United States vs. Harry M. Blackmer.—In contempt. No. 16.—Order.—And now, November 16, 1927, upon consideration of the petition heretofore filed by Peyton Gordon, United States attorney for the District of Columbia, Atlee Pomerene and Owen J. Roberts, special counsel for the United States of America, it is ordered as follows:

1. The said Harry M. Blackmer is hereby directed to appear before this court on Friday, January 6, 1928, at 10 o'clock a. m., to show cause why he should not be adjudged guilty of contempt and be punished accordingly.

2. That the property of the said Harry M. Blackmer within the United States, of the amount and value of $100,000, be levied upon and seized by the marshal of this court and held to satisfy any judgment that may be
21 rendered against the said Harry M. Blackmer in this proceeding.

3. That the marshal of this court is hereby directed, upon making such levy, to forward to the consuls of the United States at Paris, France; at Nice, France, and at any other places in France or in any other countries where the said Harry M. Blackmer may be, a copy of this order, with the request that such consul or consuls make service of the same personally upon the said Harry M. Blackmer; and further, that the said marshal shall cause this order to be published in The Washington Evening Star, a newspaper of general circulation in the District of Columbia, once each week for six consecutive weeks, in accordance with the provisions of Section 6, c. 762, of the act approved July 3, 1926, 44 Stat. 835. By the Court: F. I. Siddons, Judge. (Seal.) A true copy. Test: Frank E. Cunningham, Clerk, by Chas. B. Coffin, Asst. Clerk.

By virtue of a special order issued out of the Supreme Court of the District of Columbia in the case of the United States vs. Harry M. Blackmer, in contempt No. 16, I have this day levied upon and seized and taken into my custody

securities to the value of $100,000, being the property of the said Harry M. Blackmer, and I hereby give notice to the said Harry M. Blackmer to be and appear before the Supreme Court of the District of Columbia on or before January 6, 1928, at 10 o'clock a. m., otherwise the property levied upon and seized by me will be sold and the proceeds covered into the Treasury of the United States, as provided in said order of the court, "to satisfy any judgment against the said Harry M. Blackmer in this proceeding."

EDGAR C. SNYDER,
U. S. Marshal in and for
the District of Columbia.

22 *Motion to Vacate Order.*

Filed December 31, 1927.

* * * * * * *

And now come Nathan L. Miller and George Bordon Battle, attorneys for Harry M. Blackmer, appearing specially for the purposes of this motion only, and move this Honorable Court to vacate and set aside the order herein of this Honorable Court dated November 16, 1927, and all proceedings pursuant thereto, on the ground that this Honorable Court has not jurisdiction of said Blackmer and has not jurisdiction of this proceeding, for the following reasons, among others, viz:

(1) That said order and all proceedings pursuant thereto and the provisions of the Act of Congress of July 3, 1926, C. 762 (44 Stat. 835), pursuant to which said order was made and said proceedings had, are void because in conflict with the following provisions of the Constitution of the United States, viz:

(*a*) The Fifth Amendment, providing that no person shall be deprived of life, liberty, or property without due process of law;

(*b*) The Fourth Amendment, providing that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures, shall not be violated;

(*c*) The Eighth Amendment, providing that excessive fines shall not be imposed, nor unusual punishments inflicted;

(*d*) The Sixth Amendment, providing that in all criminal prosecutions, the accused shall enjoy the right to be
23 informed of the nature and cause of the accusation;

(*e*) The Sixth Amendment, providing that in all criminal prosecutions the accused shall enjoy the right of trial by jury;

(*f*) The Sixth Amendment, providing that in all criminal prosecutions, the accused shall enjoy the right to have compulsory process for obtaining witnesses in his favor.

Wherefore the undersigned move this Honorable Court to issue an order vacating and setting aside said order dated November 16, 1927, and vacating and setting aside the purported service thereof on said Blackmer by delivery of a copy thereof to him personally in France and by publication thereof in the Washington Evening Star pursuant to said order, and directing the immediate release of said Blackmer's property within the United States heretofore levied upon or seized by the Marshal pursuant to said order, viz., One Hundred Thousand Dollars par value of First Liberty Loan Bonds.

And the undersigned further move this Honorable Court to extend the time for answer in this proceeding until twenty days after final determination of the foregoing motion.

This motion is made upon the proceedings heretofore had herein and upon the annexed affidavit of George Gordon Battle, verified December 30, 1927.

Dated December 30, 1297.

NATHAN L. MILLER,
GEO. GORDON BATTLE,
Attorneys for Harry M. Blackmer, Appearing Specially for the Purposes of this Motion Only.

24 Please take notice that the above motion will be presented to this Court, Mr. Justice Siddons presiding on Jan. 6, 1928, at 10 a. m.

Respectfully,

NATHAN L. MILLER,
GEO. GORDON BATTLE,
Attorneys for H. M. Blackmer, Appearing Specially, &c.

Dated Dec. 31, 1927.

Affidavit in Support of Motion to Vacate Order.

* * * * * * *

STATE OF NEW YORK,
County of New York, ss:

George Gordon Battle, being duly sworn, deposes and says: I am one of the attorneys for Harry M. Blackmer in this proceeding, appearing specially for the purposes of the above mentioned motion only. I have acted as attorney for Mr. Blackmer in various matters during a number of years last past, and am familiar with his affairs.

Since prior to some time in the year 1926, Mr. Blackmer has never resided or been domiciled anywhere within the United States, but has continuously resided and been domiciled abroad.

I have requested Mr. Blackmer to make and forward to me his own affidavit of the facts in this regard, which I expect to receive shortly, and upon receipt thereof I will submit it to this Honorable Court in support of my
25 present affidavit.

GEO. GORDON BATTLE.

Sworn and subscribed to before me this 30th day of December, 1927.

[NOTARIAL SEAL.] EDITH M. HARDY,
Notary Public, Westchester Co.

Certificate filed in New York County.

Clerk's No. 27, Register's No. 9011.
Kings Co. Clk. No. 1, Reg. No. 9012.
Commission expires March 30, 1929.

26 *Affidavit of Henry M. Blackmer.*

Filed January 19, 1928.

CITY OF PARIS,
Republic of France, ss:

On this 2nd day of January, 1928 personally appeared before me Henry M. Blackmer, who, being duly sworn, deposes and says that he was born in the City of Worcester, State of Massachusetts, United States of America; that for

a period of over ten years up to and including 1923, he was a resident of the City of Denver, State of Colorado, United States of America, having his home in that city, and was actively engaged in business there; that for some years prior to 1923 he was the President and later the Chairman of the Board of Directors of the Midwest Refining Company, a Colorado corporation engaged in the oil business; that in the year 1924 he left the City of Denver, State of Colorado, United States of America, resigning his position as Chairman of the Board of Directors of the Midwest Refining Company, and retired from business, taking up his residence at Hotel Plaza Athenée, in the City of Paris, France (although retaining his American citizenship); that thereafter and in the year 1926 he formed the intention of residing permanently abroad and then disposed of his former home in the said City of Denver, since which time he has at all times resided abroad, spending his time in England, in France and elsewhere. Since 1924 the affiant has had no regular place of business in the United States of America, and such business affairs as he had in America have been handed chiefly by his attorneys in the City of New
27 York, State of New York.

HENRY M. BLACKMER.

Sworn to and subscribed before me this 2nd day of January, 1928.

[SEAL.] BENJAMIN H. CONNER,
A Commissioner for the State of New York.

28 *Order Continuing Hearing on Motion and Rule.*

Filed December 31. 1927.

* * * * * * *

Come now the parties hereto, by their respective attorneys of record (the attorneys for the respondent Harry M. Blackmer appearing specially for the purpose of the motion only) and now, this 31st day of December, A. D. 1927, before Mr. Justice Siddons, in open Court, attorneys for respondent move for a postponement of the hearing on the Rule to Show Cause heretofore made returnable January 6th, 1928 to a later date, and further having filed a motion to vacate the order of this Court dated November 16th,

1927, the said motion for postponement having been heard and considered, it is, for good cause shown,

Ordered, that the hearing on said motion and the hearing on the rule to show cause be and the same are hereby postponed to the 27th day of February, A. D. 1928, at ten o'clock A. M.

F. L. SIDDONS,
Justice.

29 In the Supreme Court of the District of Columbia.

Contempt. No. 16.

UNITED STATES

vs.

HARRY M. BLACKMER.

On Submission After Hearing Upon Motion to Vacate and Set Aside the Order of This Court Dated November 16, 1927, and All Proceedings Pursuant Thereto.

Filed Mar. 21, 1928. Frank L. Cunningham, Clerk.

Statement of the Case.

On December 31, 1927, Messrs. Nathan L. Miller and George Gordon Battle, attorneys for the respondent Harry M. Blackmer, "appearing specially for the purposes of this motion only," moved the Court to vacate and set aside its order of November 16, 1927, and all proceedings pursuant thereto, on the ground that the Court had not jurisdiction of Blackmer and had not jurisdiction of this proceeding for the reasons stated in the motion. The motion was brought forward for oral argument and then submitted on March 3, 1928, and the last of the trial briefs submitted on March 12, 1928. The reasons upon which the pending motion is based are

"That said order and all proceedings pursuant thereto and the provisions of the Act of Congress of July 3, 1926, C. 762 (44 Stat. 835), pursuant to which said order was made and said proceedings had, are void because in conflict with the following provisions of the Constitution of the United States,"

and the constitutional provisions cited are the Fourth, Fifth, Sixth and Eighth Amendments to the Constitution.

And then the motion proceeds to ask that the Court
30 issue an order vacating and setting aside its order of November 16, 1927, and vacating and setting aside th purported service thereof on said Blackmer by a delivery of a copy thereof to him personally in France and by publication thereof in the Washington Evening Star pursuant to said order, and directing the immediate release of said Blackmer's property within the United States heretofore levied upon or seized by the Marshal pursuant to said order. The motion further asked that the Court extend the date for answer in this proceeding until twenty days after final determination of the pending motion, and it concludes with the following paragraph:

"This motion is made upon the proceedings heretofore had herein and upon the annexed affidavit of George Gordon Battle, verified December 30, 1927."

The motion itself is dated December 30, 1927, but was filed on the next day.

The order to which the pending motion is directed is in the following terms:

"And now, November 16th, 1927, upon consideration of the petition heretofore filed by Peyton Gordon, United States Attorney for the District of Columbia, Atlee Pomerene and Owen J. Roberts, Special Counsel for the United States of America, it is ordered as follows:

1. The said Harry M. Blackmer is hereby directed to appear before this Court on Friday, January 6, 1928, at ten o'clock A. M., to show cause why he should not be adjudged guilty of contempt and be punished accordingly.

2. That the property of the said Harry M. Blackmer within the United States, of the amount and value of $100,000, be levied upon and seized by the Marshal of this Court and held to satisfy any judgment that may be rendered against the said Harry M. Blackmer in this proceeding.

3. That the Marshal of this Court is hereby di-
31 rected upon making such levy to forward to the Consuls of the United States at Paris, France, at Nice,

France, and at any other places in France or in any other countries where the said Harry M. Blackmer may be, a copy of this order, with the request that such Consul or Consuls make service of the same personally upon the said Harry M. Blackmer; and further that the said Marshal shall cause this order to be published in The Washington Evening Star, a newspaper of general circulation in the District of Columbia once each week for six consecutive weeks, in accordance with the provisions of Section 6, c. 762, of the Act approved July 3, 1926, 44 Stat. 835."

In the pending criminal case, No. 43,324, being the case of the United States vs. Harry F. Sinclair and Albert B. Fall, there was filed, on May 13, 1927, the petition of the United States Attorney in and for the District of Columbia, and of Atlee Pomerene and Owen J. Roberts, Special Assistants to the Attorney General of the United States, in which the petitioners alleged that the criminal case was set for trial on Monday, October 17, 1927, and that the petitioners desired the attendance at the said trial of one James E. O'Neil and H. M. Blackmer, who, the petition declared, are citizens of the United States, and then beyond the jurisdiction of the United States, the petitioners being advised that they were then, or lately had been, in the Republic of France; that the attendance of said two persons at the criminal trial mentioned

"is vital and important to the United States, because as your petitioners aver, they believe that the said witnesses have knowledge and information with regard to certain important facts which the United States desires to prove in the said cause, and that their testimony as to said facts will be material in connection with the establishment not only of the conspiracy charged between the defendants in the above captioned cause, but in connection with the proof of overt acts done by the defendants pursuant to
32 said conspiracy. More particularly your petitioners believe and therefore aver that the said James E. O'Neil and H. M. Blackmer can testify to facts concerning the persons who were in the latter part of the year 1921 and during the year 1922 stockholders of the Continental Trading Company, Ltd., a corporation, and with regard to the distribution by that corporation to its stockholders of

certain United States 3½% Liberty Loan bonds as dividends, certain of which bonds, as your petitioners believe and therefore aver, were subsequentlyy delivered by or on behalf of one of the defendants, Harry F. Sinclair, to the other defendant, Albert B. Fall."

The petition further alleged that is was based upon the provisions of the Act of Congress, being No. 483 of the 68th Congress, entitled "An Act relating to contempts," approved July 3, 1926, and the petitioners therefore prayed that the Court order that subpœnas issue in this cause, addressed to any Consul General or Consul of the United States within the Republic of France, or within any country in which either of the said witnesses might be, commanding such witness to appear before this Court in Criminal Court No. 2, at the City of Washington, D. C., on the 17th day of October, 1927. The petition further prayed that the Court, upon entering the order, fix the amount which shall be tendered to the said witnesses, respectively, for their necessary expenses in travelling to and from the City of Washington, D. C., where the Court sits, and the expenses of his attendance upon the Court, and they represented that Five Hundred (500) Dollars would be a proper sum to be fixed in that behalf.

Pursuant to that petition, the Court, on the same day, passed an order directing that subpœnas issue, as prayed for in the petition, which subpœnas should be ad-
33 dressed to any Consul of the United States in the Republic of France, or in any other country where said witnesses may be ascertained to be, commanding said witnesses to be and appear before the Court in Criminal Court No. 2, on the 17th of October, 1927, and fixing the amount to be tendered to each of said witnesses for his necessary expenses in traveling to and from Washington, D. C., and for his attendance at Court, at the sum of Five Hundred (500) Dollars.

Pursuant to that order, the subpœnas were issued and one of the subpœnas directed to the respondent Blackmer was, according to the return, personally server upon him on May 27, 1927,

"between 5 P. M. and 5:15 P. M. at the usual residence of the witness, rooms 501-502-503, Hotel Plaze Atheneé, 25

Avenue Montaigue, Paris, France, and in the presence of Consul Raymond Davis and Mr. Henri Gadd, Attorney for the witness. The witness declined to accept the sum of $500 in United States currency tendered him for traveling expenses. The original copy hereof was left in the hands of the witness."

This return is made by George Orr, Consul of the United States of America at Paris, France. The return is under date of May 27, 1927. There had been, however, two subpœnas issued for Blackmer, the first dated May 13, 1927, and which contains the return just quoted, and another, issued on the same day, the return to which was made under date of June 7, 1927, and the return is in the following words:

"Summoned personally all, the 7th day of June, 1927, H. M. Blackmer, by exhibiting said subpœna personally to the said H. M. Blackmer, reading the same to him, and leaving a duplicate copy with him at Paris, France.
34 And I further certify that pursuant to the order of the Court I did at the time of said service tender to the said H. M. Blackmer the sum of $500 currency of the United States of America, which tender the said H. M. Blackmer then and there refused."

This return was made by Raymond Davis, Consul of the United States at Paris, France.

It should also be stated that a copy of the order of the Court, which is attacked by the pending motion, was also personally served upon the respondent Blackmer in Paris, France, on December 5, 1927, and a return of the fact of service made to this Court. There has also been made a return, under date of November 19, 1927, by the Marshal in and for the District of Columbia, of his levy upon and seizing One Hundred Thousand (100,000) Dollars in United States First Liberty Bonds, at the par value of One Hundred Thousand (100,000) Dollars, the property of the respondent Blackmer, and proof of publication in the Washington Evening Star, as required by said order, has also been made.

There is no denial, by or on behalf of the respondent, and it is clear that the requirements of the Act of Congress

mentioned, in such a case as is herein presented, have been scrupulously observed and carried out.

Reasons and Conclusion.

The pending motion is in the nature of a demurrer, raising the question of the constitutionality of the Act of Congress, pursuant to which the foregoing proceedings took place, and, stating the matter broadly, it presents
35 the contention that Congress could not, constitutionally clothe this Court with the powers exercised by it, as above stated. The facts which the proceedings mentioned disclose, show that the respondent is a citizen of the United States, and was abroad, in France, when the subpœnas or summonses and order mentioned above, were personally served upon him.

In the examination of the statute under consideration, it is well to bear in mind some fundamental principles which control the relations which exist between a citizen of the United States and the Federal Government. These relations have to do with the duties of such a citizen to his government, and of his rights, privileges and immunities. No question is involved in this case, under the pending motion, of that dual citizenship that may exist under our form of government, that of State citizenship and United States citizenship. We are concerned only with a citizen of the United States, who, for several years, has been living abroad, and who has taken no step nor so conducted himself as to evidence an intention to effect expatriation.

While no case has been found that has attempted an enumeration of all of the duties of a citizen of the United States to his Government, both text writers and the Supreme Court have laid down the principle that such a citizen owes the prime duty of allegiance to his government. Thus we find the Supreme Court of the United States in Carlisle vs. United States, 16 Wal. 147, *154*, speaking through Mr. Justice Field, using this language:

36 "By allegiance is meant the obligation of fidelity and obedience which the individual owes to the government under which he lives, or to his sovereign in return for the protection he receives. It may be an absolute and permanent obligation, or it may be a qualified and tem-

porary one. The citizen or subject owes an absolute and permanent allegiance to his government or sovereign, or at least until, by some open and distinct act, he renounces it and becomes a citizen or subject of another government or another sovereign."

And at a later date, in the case of Minor vs. Happersett, 21 Wal., 162, *165, 166*, the Court, speaking through its then Chief Justice, uses this language:

"There cannot be a nation without a people. The very idea of a political community, such as a nation is, implies an association of persons for the promotion of their general welfare. Each one of the persons associated becomes a member of the nation formed by the association. He owes it allegiance and is entitled to its protection. Allegiance and protection are, in this connection, reciprocal obligations. The one is a compensation for the other; allegiance for protection and protection for allegiance."

And at a much later period, in 1913, the same Court, in the case of Luria vs. United States, 231 U. S., 9, *22*, speaking through Mr. Justice Van Devanter, uses this language:

"Citizenship is membership in a political society and implies a duty of allegiance on the part of the member and a duty of protection on the part of the society. These are reciprocal obligations, one being a compensation for the other."

And see the "Constitution of the United States," by the late Justice Miller of the Supreme Court of the United States, pages 294, 295. Vattel, "The Law of Nations," 1853 edition, pages 105, 172, 173, 174, and other text writers of authority.

37 To the foregoing may be added the language of the Supreme Court in two early cases; in the first of which the Court, speaking through Chief Justice Marshal, uses this language:

"It is conceded, that the legislation of every country is territorial; that *beyond its own territory, it can only affect its own subjects or citizens.*" (Underscoring supplied.) Rose vs. Himely, 4 Cranch *241, **279.*

and in the second, speaking through Mr. Justice Story:

"The laws of no nation can justly extend beyond its own territories, *except so far as regards its own citizens.* They can have no force to control the sovereignty or rights of any other nation, within its own jurisdiction." (Underscoring supplied.) The Apollon, 9 Wheat. *362, *370.

From the foregoing authorities, it appears clear that the allegiance of a citizen of the United States, though actually living in an foreign jurisdiction, includes the duty of obedience to the laws of the sovereignty to which the allegiance is due. Indeed, without such obedience allegiance would be but an empty name. It may be that there are cases and occasions when, by reason of the absence of the citizen in a foreign sovereignty, his government may not be able to inflict upon him, the punishment, for instance, of imprisonment for a violation of one of its laws, but this is not due to any imperfection in the scope of the allegiance, but rather to the limitations or restrictions imposed by international law and relations. Under these the government of the United States could not, without the consent of the foreign sovereignty where the offending citizen might be,
take him into custody, return him to his own country,
38 there to proceed against him for his offense. Though
this may not be done, it does not follow that there are not other means within the power of the government whose right to allegiance is flaunted by one or its citizens and obedience to its laws defied by him, by which the government may exact the allegiance due to it and, measurably at least, enforce obedience to its just laws, by imposing a penalty that does not require the physical presence of the offending citizen within the territorial jurisdiction of his government, for its execution.

This brings us to a brief examination of the Act of Congress, the constitutionality of which is challenged by the pending motion. It was approved July 3, 1926, and is entitled, "An Act Relating to Contempts." The first section of the Act prescribes the procedure that may be resorted to by a Court of the United States where a witness

"being a citizen of the United States or domiciled therein, and such witness, having been personally notified by it according to the practice of such court, to appear and tes-

tify pursuant to such letters rogatory and such witness shall neglect to appear, or having appeared shall decline, refuse, or neglect to answer to any question which may be propounded to him by or under the authority of such court, to which he would be required to make answer were he being examined before the court issuing such letters, the court out of which said letters issued may upon proper showing order that a subpœna issue addressed to any consul of the United States within any country in which such witness may be, commanding such witness to appear before the said court at a time and place therein designated."

The remaining sections of the statute are quoted in full:

39 "Sec. 2. Whenever the attendance at the trial of any criminal action of a witness, being a citizen of the United States or domiciled therein, who is beyond the jurisdiction of the United States, is desired by the Attorney General or any assistant or district attorney acting under him, the judge of the court before which such action is pending, or who is to sit in the trial of the same, may, upon proper showing, order that a subpœna issue, addressed to any consul of the United States within any country in which such witness may be, commanding such witness to appear before the said court at a time and place therein designated.

Sec. 3. It shall be the duty of any consul of the United States within any country in which such witness may be at the request of the clerk of the court issuing any subpœna under this Act or at the request of the officer causing such subpœna to be issued, to serve the same personally upon such witness and also to serve any orders to show cause, rules, judgments, or decrees when requested by the court or United States marshal, and to make a return thereof to the court out of which the same issued, first tendering to the witness the amount of his necessary expenses in traveling to and from the place at which the court sits and his attendance thereon, which amount shall be determined by the judge on issuing the order for the subpœna and supplied to the consul making the service.

Sec. 4. If a witness so served shall neglect or refuse to appear as in such subpœna directed, the court out of which

it was issued shall, upon proof being made of the service and default, issue an order directing the witness to appear before the court at a time in such order designated to show cause why he should not be adjudged guilty of contempt and be punished accordingly.

Sec. 5. Upon issuing such order the court may, upon the giving of security for any damages which the recusing witness may have suffered, should the charge be dismissed (except that no security shall be required of the United States), direct as a part of such order that the property of the recusing witness, at any place within the United States, or so much thereof in value as the court may direct shall be levied upon and seized by the marshal of said court in the manner provided by law or the rule of the court for a levy or seizure under execution, to be held to satisfy any judgment that may be rendered against such witness in the proceeding so instituted.

"Sec. 6. The marshal, having made such levy, shall thereupon forward to the consul of any country where the recusing witness may be a copy of the order to show cause why such witness should not be adjudged guilty of contempt with the request that said consul make service of the same personally upon the recusing witness, and shall cause to be published such order to show cause and for the sequestration of the property of such witness, in some newspaper of general circulation in the district within which the court issuing such order sits, once each week for six consecutive weeks.

Sec. 7. On the return day of such order or any later day to which the hearing may by the court be continued, proof shall be taken; and if the charge of recusancy against the witness shall be sustained, the court shall adjudge him guilty of contempt and, notwithstanding any limitation upon the power of the court generally to punish for contempt, impose upon him a fine not exceeding $100,000 and direct that the amount thereof, with the costs of the proceedings, be satisfied, unless paid, by a sale of the property of the witness so seized or levied upon, such sale to be conducted upon the notice required and in the manner provided for sales upon execution.

Sec. 8. Any judgment rendered pursuant to this Act upon service by publication only may be opened for answer

within the time and in the manner provided in section 57 of the Judicial Code."

It seems clear to the Court from an examination of this statute that its purpose and intent is to clothe the courts of the United States with the power to compel the appearance to testify of a necessary and a material witness in either civil suits or criminal actions, (in the latter actions if the attendance of the witness "is desired by the Attorney General or any assistant or district attorney acting under him",) if he be a citizen of the United States or domiciled therein, but who is, beyond the territorial jurisdiction of the United States, and that if such a witness refuses to obey the subpœna or subpœnas of the Court issued pursuant to the Act, that it further provides for the institution of con-/ tempt proceedings against him. In that event the statute prescribes that the Court issue an order directing the witness to appear before the Court, at a time in such
41 order designated, to show cause why he should not be adjudged guilty of contempt and be punished accordingly (Section 4); that upon issuing such an order the Court may direct, as part of such order, that the property of the recusing witness at any place within the United States, or so much thereof in value as the Court may direct, shall be levied upon and seized by the Marshal of said court "to be held to satisfy any judgment that may be rendered against such witness in the proceeding so instituted." (Section 5). The Marshal having made the levy, shall thereupon forward to the Consul of any country where the recusing witness may be a copy of the order to show cause, with the request that said Consul make service of same personally upon the recusing witness, and shall cause to be published such order to show cause "and for the sequestration of the property of such witness, in some newspaper of general circulation in the district within which the court issuing such order sits, once each week for six consecutive weeks." (Section 6). On the return day of such order, or at a later day to which the hearing may be continued, proof shall be taken, and if the charge of recusancy against the witness shall be sustained, the court shall adjudge him guilty of contempt and "nothwithstanding any limitation upon the power of the court generally to

punish for contempt, impose upon him a fine not exceeding $100,000 and direct that the amount thereof, with the costs of the proceeding, be satisfied, unless paid, by a
42 sale of the property of the witness so seized or levied upon, such sale to be conducted upon the notice required and in the manner provided for sales upon execution.'" (Section 7.)

It thus appears that knowledge of every essential step prescribed by the statute in such a case is to be brought home to the witness by personal service upon him in the foreign sovereignty in which he may be, of the subpoenas and orders of the Court, and the witness has but to yield obedience to the requirements of the law in order to escape the consequences that may follow from his disobedience, and if he renders obedience, he renders it at no expense to himself, and is, as it seems to the Court, but performing an imperative duty of United States citizenship, which may be of vital importance to his Government.

It is urged on the respondent's behalf that pursuant to constitutional provisions, he cannot thus be coerced unless within the territorial jurisdiction of his country and its courts. This Court cannot accept this contention, which, if sound, would in such case render the Government supine and helpless. The provision of the statute for the sequestration of the property of such a witness within the territorial jurisdiction of the United States is analogous to the sequestration of property, not infrequently made, of a party litigant who otherwise, by the simple expedient of remaining out of the territorial jurisdiction of the court, may defeat the purposes of a suit or action. It may be re-
43 marked that the statute also contemplates a *locus penitentiae* for the disobedient citizen and witness.

In the respondent's behalf, the contentions as to the alleged unconstitutionality of this Act have been presented with zeal and ability, but, in the Court's opinon, have been fully met by the exhaustive and, the Court thinks, conclusive answer that government counsel have made to them. The trial briefs, which the respective counsel have submitted, disclose how carefully the arguments, pro and con, which have been made, are based upon a very thorough examination of the applicable law upon the subject.

Much more could be said by the Court in support of the conclusion that it has reached, and this much more should be said.

In approaching a question of the alleged unconstitutionality of an Act of the legislature, we should bear in mind the language of Chief Justice Marshall in the case of Fletcher vs. Peck, 6 Cranch *87, *128:

"The question, whether a law be void for its repugnancy to the constitution, is, at all times, a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative, in a doubtful case. The court, when impelled by duty to render such a judgment, would be unworthy of its station, could it be unmindful of the solemn obligations which that station imposes. But it is not on slight implication and vague conjecture, that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other."

44 And, again, we have the language of a prevailing opinion in the famous case of Ogden vs. Saunders, 12 Wheat. *213, *270, where the Court, speaking through Mr. Justice Washington states:

"I shall now conclude this opinion, by repeating the acknowledgment which candor compelled me to make in its commencement, that the question which I have been examining is involved in difficulty and doubt. But if I could rest my opinion in favor of the constitutionality of the law on which the question arises, on no other ground than this doubt so felt and acknowledged, that alone, would, in my estimation, be a satisfactory vindication of it. It is but a decent respect due to the wisdom, the integrity and the patriotism of the legislative body by which any law is passed, to presume in favor of its validity, until its violation of the constitution is proved beyond all reasonable doubt. This has always been the language of this court, when that subject has called for its decision; and I know that it expresses the honest sentiments of each and every member of this bench."

And, again, the Supreme Court, speaking through Mr. Chief Justice Waite, in the Sinking-Fund Cases, 99 U. S. 700, 718, uses this language:

"It is our duty, when required in the regular course of judicial proceedings, to declare an act of Congress void if not within the legislative power of the United States; but this declaration should never be made except in a clear case. Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule."

(And see, Briscoe vs. Bank of Kentucky, 8 Pet. 118, 122; Railway Company vs. Wellman, 143 U. S. 339, 345, 346; Brown vs. Walker, 161 U. S. 591, 596; Naganab vs.
45 Hitchcock, 25 D. C. App., 200, 205; Cooley's Principles of Constitutional Law, 163, et seq.; 1 Roses Notes 396, 397, et seq.; and 2 Roses Notes 412, 418, et seq.)

This being the attitude of the Supreme Court of the United States, with what compelling force does it bear upon a trial court. If the writer of the present memorandum had a doubt of the constitutionality of the Act in question, he would, under the wise rule of the Supreme Court quoted above, resolve that doubt in favor of the constitutionality of this Act of the Federal Congress.

For the reasons stated above, the conclusion is that the pending motion must be overruled. And an order to this effect will be settled and signed on notice.

F. L. SIDDONS,
Justice.

March 21, 1928.

46 *Decree.*

Filed April 23, 1928.

* * * * * * * *

And now, to-wit, April 23rd, 1928, the motion to vacate and set aside the order of this Court dated November 16,

1927, and all proceedings pursuant thereto having come on to be heard and having been fully argued by counsel, it is ordered and decreed that the said motion to vacate and set aside the order of this Court dated November 16, 1927, and all proceedings pursuant thereto be and the same is hereby overruled; and the defendant, Harry M. Blackmer, is hereby given 20 days in which to file his answer in the above-entitled proceedings.

F. L. SIDDONS,
Justice.

47 *Plea.*

Filed May 14, 1928.

* * * * * * *

Whereas on or about December 30, 1927, Nathan L. Miller and George Gordon Battle, attorneys for the defendant, Harry M. Blackmer, appearing specially for that purpose only, moved this Honorable Court to vacate and set aside the order to show cause herein, dated November 16, 1927, and all proceedings pursuant thereto, on the ground that this Honorable Court had not jurisdiction of the defendant or of this proceeding, and in particular moved this Honorable Court to vacate and set aside the purported service herein of said order on the defendant while in Paris, France, pursuant to the terms of said order, and to direct the release of his property in the United States seized pursuant to the terms thereof; and

Whereas said motion was made upon the proceedings theretofore had herein and upon the affidavit of said George Gordon Battle, thereto annexed, showing that since prior to 1907 the defendant had never resided or been domiciled anywhere within the United States but had continuously resided and been domiciled abroad; and

Whereas on the hearing of said motion the defendant's said attorneys requested a preliminary trial of the facts so alleged, if controverted by the United States, and thereupon the attorneys for the United States stated in open court that said allegations regarding the defendant's residence and domicile were not controverted by the United States; and

48 Whereas said allegations were not controverted and accordingly no trial of the facts so alleged was had; and

Whereas by order dated April 23, 1928, this Honorable Court denied said motion and gave the defendant twenty days from said date in which to file his answer herein; and

Whereas the defendant and his said attorneys believe that this Honorable Court has not jurisdiction of the defendant or of this proceeding and that said motion should accordingly have been granted:

Now, therefore, the defendant, Harry M. Blackmer, by his said attorneys, Nathan L. Miller and George Gordon Battle, appears and answers herein under protest, pursuant to said order of April 23, 1928, reserving all his claims and rights in and under said motion of December 30, 1927, and the proceedings had thereon; and, subject to such protest and reservation, for his plea to the charge contained in the petition heretofore filed herein on behalf of the United States pursuant to which said order to show cause of November 16, 1927, was issued, answers the allegations of said petition as follows:

1. Answering the allegations contained in paragraph (1) of said petition, the defendant denies that he was on May 13, 1927, or has been at any time since said date, domiciled or resident in the United States or only temporarily sojourning in France; denies that the petition of May 13, 1927, referred to in said paragraph, so stated; and alleges that continuously since prior to the year 1927 and up to the present time the defendant has been domiciled and has resided without the United States. Except as hereinbefore denied or alleged to the contrary, the defendant ad-

49 mits the allegations contained in said paragraph (1).

2. Answering the allegations contained in paragraph (2) of said petition, the defendant denies that the issuance of subpœnas therein referred to was due or lawful; denies that the order of May 13, 1927, therein referred to, for such issuance of subpœnas, was due or lawful; denies that the petition of May 13, 1927, therein referred to, upon which said order was based, was a sufficient basis therefor in law. Copies of said petition and order, marked Exhibit "A" and Exhibit "B" respectively, are hereto annexed and made parts hereof. Except as hereinbefore denied or alleged to the contrary, the defendant admits the allegations contained in said paragraph (2).

3. The defendant admits the allegations contained in paragraphs (3) and (4) of said petition.

4. Answering the allegations contained in paragraph (5) of said petition, the defendant denies that the steps therein alleged to constitute service of one of said subpœnas upon him in Paris, France, on May 27, 1927, constituted due or lawful service thereof upon him or had any legal force or effect; denies that the steps therein alleged to constitute service of one of said subpœnas upon him in Paris, France, on June 7, 1927, constituted due or lawful service thereof upon him or had any legal force or effect; alleges that at the time of each such alleged service he declared his refusal to accept such service; and denies that either of said subpœnas was ever of any legal force or effect in Paris, France. Except as hereinbefore denied or alleged to the contrary, the defendant admits the allegations contained in said paragraph (5).

5. Answering the allegations contained in paragraph (6) of said petition, the defendant denies that the returns of service therein referred to were due or lawful; and alleges that each of said returns shows on its face that the alleged service, therein referred to, was not due or lawful service nor of any legal force or effect. Except as hereinbefore denied or alleged to the contrary, the defendant admits the allegations contained in said paragraph (6).

6. Answering the allegations contained in paragraph (7) of said petition, the defendant denies that there was any neglect or refusal on his part in failing to appear as therein alleged; denies that Nathan L. Miller and George Gordon Battle or either of them or anyone appeared for the purpose of stating or stated that the defendant would not appear in answer to said subpœnas; alleges that said attorneys then and there appeared specially for the sole purpose of explaining to this Honorable Court why the defendant was not there at said time, and then and there offered to make such explanation but were not permitted by this Honorable Court to do so. Except as hereinbefore denied or alleged to the contrary, the defendant admits the allegations contained in said paragraph (7).

And for a further plea,

7. The defendant realleges the allegations contained hereinbefore, as if here repeated at length; and alleges

that the order of May 13, 1927, referred to in paragraph (1) of said petition, and the issuance and alleged service of subpœnas pursuant thereto, referred to in paragraphs (2), (3) and (5) of said petition, and the alleged returns of such alleged service, referred to in paragraph (6) of said
51 petition, and the provisions of the Act of Congress of July 3, 1926, C. 762 (44 Stat. 835), pursuant to which said proceedings were taken, were and are null, void and of no force or effect because in conflict with the Constitution of the United States, especially the provision of the Fifth Amendment, that no person shall be deprived of life, liberty or property without due process of law, and the provision of the Sixth Amendment, that in all criminal prosecutions the accused shall enjoy the right to have compulsory process for obtaining witnesses in his favor.

And for a further plea,

8. The defendant alleges that, after the alleged service of subpœnas referred to in paragraph (5) of said petition, the defendant, desiring to perform his legal obligations in the premises, if any, obtained opinions in that regard from several attorneys at law of high repute in the United States, including the attorneys now representing him in this proceeding; that he was advised by each and all of said attorneys, after full consideration, that he was not under any such obligation, but that, on the contrary, said alleged service and the proceedings purporting to authorize the same and the provisions of the Act of Congress purporting to legalize said proceedings were unconstitutional and wholly void and of no force or effect for the reasons hereinbefore mentioned; and that it was because of said advices that the defendant did not appear according to the purported command of said alleged subpœnas so allegedly served.

Wherefore the defendant prays judgment that he is not guilty of contempt of court as charged in said peti-
52 tion and directing the release of his property within the United States heretofore seized by the Marshal pursuant to said order to show cause, dated November 16, 1927, viz., One Hundred Thousand Dollars par vlaue of First Liberty Loan Bonds.

NATHAN L. MILLER,
GEO. GORDON BATTLE,
Attorneys for Defendant.

53 *Joinder of Issue on Defendant's First Plea.*

Filed July 6, 1928.

* * * * * * *

And now comes the United States, by its attorneys, Leo A. Rover, United States Attorney for the District of Columbia, and Atlee Pomerene and Owen J. Roberts, Special Counsel for the United States of America, and joins issue with the defendant upon the allegation contained in paragraph one (1) of the defendant's first plea to the effect that "continuously since prior to the year 1927 and up to the present time the defendant has been domiciled and has resided without the United States"; and also upon the further allegation contained in paragraph five (5) of the defendant's first plea to the effect that "each of said returns shows on its face that the alleged service therein referred to was not due or lawful service"; and also upon the further allegation contained in paragraph six (6) of the defendant's first pleas to the effect that "said attorneys then and there appeared specially for the sole purpose of explaining to this Honorable Court why the defendant was not there at said time, and then and there offered to make such explanation but were not permitted by this Honorable Court to do so."

LEO A. ROVER,
United States Attorney.
OWEN J. ROBERTS,
ATLEE POMERENE,
Special Attorney for the United States.

54 *Demurrer to Defendant's Further Pleas.*

Filed July 6, 1928.

* * * * * * *

And now comes the United States, by its attorneys, Leo. A. Rover, United States Attorney for the District of Columbia, and Atlee Pomerene and Owen J. Roberts, Special Counsel for the United States of America, and demurs to

the defendant's further pleas, and says that the said two (2) further pleas are bad in substance.

LEO A. ROVER,
United States Attorney.
OWEN J. ROBERTS,
ATLEE POMERENE,
Special Counsel for the United States.

NOTE.—Among the matters of law intended to be argued in support of the foregoing demurrer are the following:

1. The Act of July 3, 1926, C. 762 (44 Stat. 835), does not violate in any manner the provisions of the Fifth and Sixth Amendments to the Constitution of the United States or any other provisions thereof.

2. The matter alleged in the defendant's second further plea (paragraph 8), even though true, does not constitute any defense to the present action.

3. The Act of July 3, 1926, C. 762 (44 Stat. 835), is constitutional and binding upon the defendant.

4. The further pleas of the defendant (paragraphs 7 and 8), are bad for other reasons on their face.

55 *Amended Plea.*

* * * * * * *

Recd. Sep. 9/29. F. E. Cunningham, Ck.

Whereas heretofore Nathan L. Miller and George Gordon Battle, attorneys for the defendant, Harry M. Blackmer, appearing specially for that purpose only, moved this Honorable Court to vacate and set aside the Order to Show Cause herein dated November 16, 1927, and all proceedings pursuant thereto, on the ground that this Honorable Court had not and has not jurisdiction of defendant or jurisdiction of this proceeding, for the reason and upon the grounds mentioned in said motion, and in particular moved this Honorable Court to vacate and set aside the purported service herein of said Order to Show Cause on defendant while in Paris, France, pursuant to the terms of said order, and to direct the release of his property within the United States heretofore levied upon or seized or attempted to be levied upon or seized by the Marshal pursuant to said order; and

Whereas said motion was made upon the proceedings theretofore had herein and upon the affidavit of said George Gordon Battle thereto annexed, verified December 30, 1927, wherein it appeared that since prior to 1927, defendant had never resided or been domiciled anywhere within the United States but had continuously resided and been domiciled abroad; and

Whereas on the hearing of said motion on March 3, 1928 there was also before this Honorable Court an affidavit of defendant relating to his residence abroad, and de-
56 fendant's said attorneys requested a preliminary trial of the facts as to defendant's residence and domicile as alleged in said affidavits, if controverted by the United States, pursuant to which said Order to Show Cause States stated in open court that said allegations were not controverted by the United States; and

Whereas said allegations were not controverted and accordingly no trial of the facts so alleged was had; and

Whereas by order dated April 23, 1928, this Honorable Court overruled and denied the said motion and gave defendant twenty days in which to file his answer herein; and defendant and his attorneys believe that this Honorable Court has not jurisdiction of defendant or of this proceeding, and that said motion should accordingly have been granted:

Now, therefore, defendant, by his undersigned attorney, appears and answers herein under protest, pursuant to said order of April 23, 1928, reserving all his claims and rights in and under the said motion and the proceedings had thereon; and subject to such protest and reservation, for his plea to the charge contained in the Petition for Order to Show Cause heretofore filed on behalf of the United States, pursuant to which said Order to Show Cause of November 16, 1927, was issued, answers the allegations of said petition as follows:

1. Answering paragraph 1 of said Petition for Order to Show Cause, defendant:

(*a*) Admits that on the 13th day of May, 1927, Peyton Gordon, United States Attorney for the District of Columbia, and Atlee Pomerene and Owen J. Roberts, Special Counsel for the United States of America, presented
57 their petition to this Honorable Court for the issuance of subpœnas (hereinafter referred to as said Pe-

tition for Subpœnas) directed to defendant, who was and is a citizen of the United States, to appear before this Honorable Court on Monday, the 17th day of October, 1927, as a witness in the case of the United States vs. Harry F. Sinclair and Albert B. Fall, Criminal No. 43,324, on the docket of this Honorable Court, and that said Petition for Subpœnas now appears of record therein.

(*b*) Denies that on May 13, 1927, or at any time since, defendant was domiciled or resident in the United States or but temporarily sojourning in France.

Denies that said Petition for Subpœnas so stated.

(*c*) Denies that said Petition for Subpœna was presented to this Honorable Court in accordance with the Act of Congress of July 3, 1926, C. 762 (44 Stat. 835) (hereinafter referred to as "said Act of Congress") and denies that said Petition for Subpœnas was in accordance with said Act of Congress.

(*d*) Alleges that continuously since prior to the year 1927 and up to the present time defendant has been domiciled and has resided without the United States.

(*e*) Alleges that said Petition for Subpœnas shows on its face that it was and is wholly invalid as a showing for the issuance of subpœnas directed to defendant in accordance with said Act of Congress, for the reason that all allegations therein contained pretending to constitute such showing are not based upon facts but upon mere unsupported, unverified beliefs of the petitioners.

58 (*f*) Alleges that said Petition for Subpœnas expressly admits that defendant is beyond the jurisdiction of the United States.

(*g*) Alleges that the presentation of and the action of this Honorable Court on said Petition for Subpœnas were entirely ex parte; that defendant was afforded neither due notice thereof nor due opportunity to be heard therein;

Alleges that defendant never received said Petition for Subpœnas, or a true copy or due notice thereof, pursuant to said Act of Congress, or to any order of this Honorable Court, or to any lawfully authorized action of any person whomsoever, in or in connection with the proceedings, or any of them, alleged or prayed for in said Petition for Order to Show Cause.

2. Answering paragraph 2 of said Petition for Order to Show Cause, defendant:

(*a*) Admits that on the 13th day of May, 1927, this Honorable Court made an order based upon the said Petition for Subpœnas for the issuance of the subpœnas therein prayed for, and that on the same day alleged subpœnas were issued directed to Consuls of the United States in foreign countries for service upon defendant.

(*b*) Denies that said alleged subpœnas duly issued;

Denies that said alleged subpœnas duly issued in accordance with the terms of said Act of Congress.

(*c*) Alleges that the alleged subpœnas referred to in paragraph 2 of said Petition for Order to Show Cause and therein alleged to have been issued on the 13th day of May, 1927, were in form as follows, to wit:

59 Supreme Court of the District of Columbia.

No. 43,324, Criminal Docket.

THE UNITED STATES

vs.

HARRY F. SINCLAIR and ALBERT B. FALL.

The President of the United States to —— ——:

You are hereby commanded to attend the said court on Monday, the 17th day of October, 1927, at ten o'clock A. M., to testify on behalf of the United States, and not depart the Court without leave of the Court or District Attoreny.

Witness the Honorable Walter I. McCoy Chief Justice of said Court, the 13th day of May, A. D. 1927.

[Seal of the Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk,

By —— ——,
Assistant Clerk.

3. Answering paragraph 3 of said Petition for Order to Show Cause, defendant

(*a*) Admits the allegations therein contained.

4. Answering paragraph 4 of said Petition for Order to Show Cause, defendant

60 (*a*) Admits that the amount to be tendered to each of the witnesses referred to in said order of this Honorable Court (based upon said Pettiion for Subpœnas) for his necessary expenses in traveling to and from Washington, D. C., and for his attendance at Court, was by said order fixed and determined at $500.00.

(*b*) Dénies each and every other allegation therein contained.

5. Answering paragraph 5 of said Petition for Order to Show Cause, defendant

(*a*) Admits that on the 27th day of May, 1927, George Orr, at Paris, in France, exhibited to and left in the hands of defendant at Paris, France, an alleged true copy of an alleged subpœna in form and substance as set out in Exhibit A attached to said Petition for Order to Show Cause; admits that said George Orr at the same time tendered to defendant the sum of Five Hundred Dollars ($500.00) in currency of the United States, and that defendant refused to take the said moneys or any part thereof.

(*b*) Admits that on the 7th day of June, 1927, Raymond Davis, at Paris, in France, exhibited and read to defendant an alleged subpœna in form and substance as set out in Exhibit B attached to said Petition for Order to Show Cause, and left with defendant, at Paris, France, a duplicate copy thereof; admits that said Raymond Davis at the same time tendered to defendant the sum of $500.00, in currency of the United States, and that defendant refused to take said moneys or any part thereof.

(*c*) As to the allegations that said George Orr and Raymond Davis were Consuls of the United States at
61 Paris, France, defendant has no knowledge or information thereof sufficient to form a belief, and therefore denies the same.

(*d*) Denies that the matters and things done alleged in paragraph 5 of said Petition for Order to Show Cause, or any of them, constitute due or lawful service of the alleged subpœnas referred to in said paragraph 5, or of either of them, upon defendant in Paris, France, on the dates mentioned, or at any other time, or that said alleged matters

and things done, or any of them, had any legal force or effect;

Denies that the said tenders of moneys, or either of them, by said Orr and/or Davis were "as ordered by this Honorable Court".

Denies that said alleged subpœnas, or either of them, ever had any legal force or effect at Paris, France, or elsewhere.

(*e*) Alleges that at the time of the said alleged services of said alleged subpœnas defendant refused to accept the same, or either of them.

Alleges that in tendering said Five Hundred Dollars ($500.00) to defendant, said Davis did not inform defendant that the same was for his necessary expenses in traveling to and from the place at which this Honorable Court sits and/or for his expenses thereat.

Alleges that in tendering said Five Hundred Dollars ($500.00) to defendant, said Orr did not inform defendant that the same, or any part thereof, was for his necessary or other expenses in attendance at Court.

(*f*) Alleges that said alleged subpœnas, and each of them, were not issued or served under the authority of said Act of Congress, or pursuant to any order of this Honorable Court under said Act of Congress; al-
62 leges that said alleged subpœnas, and each of them, contained no notice to defendant that the same were issued under authority of said Act of Congress and/or pursuant to any order of this Honorable Court; that neither the original nor a true copy of said Petition for Subpœnas, nor said Order for Subpœnas, was served as a part of or in connection with or to accompany said alleged services of said alleged subpœnas, nor either of them; that no due or lawful notice of any kind was ever furnished defendant that said subpœnas, or either of them, were issued and/or were served under authority of said Act of Congress and/or pursuant to any order of this Honorable Court.

6. Answering paragraph 6 of said Petition for Order to Show Cause, defendant

(*a*) Admits that said George Orr and said Raymond Davis made to the Clerk of this Honorable Court pretended returns of said alleged services of said alleged

subpœnas and of the alleged tenders of said moneys, as appears of record in said case (The United States vs. Harry F. Sinclair and Albert B. Fall, No. 43,324, Criminal Docket); admits that true copies of said alleged subpoenas and of said alleged returns thereof are attached to said Petition for Order to Show Cause, marked Exhibit A and Exhibit B therein, and are made a part of said Petition for Order to Show Cause.

(*b*) As to the allegation that "said consuls" made said pretended returns of said alleged services and of said alleged tenders, defendant has no knowledge or information thereof sufficient to form a belief, and therefore denies the same.

(*c*) Denies that said pretended returns of said alleged services and/or said alleged tenders, or any of them,
63 were due or lawful or that the same had or have any legal force or effect.

(*d*) Alleges that said pretended returns on their faces show that they were not due and lawful in that they show that defendant did not receive due or lawful notice that said alleged subpœnas, or either of them, and/or said alleged tenders, or either of them, were pursuant to said Act of Congress; and that defendant did not receive due or lawful notice that said moneys tendered by said Davis were for defendant's necessary expenses in traveling to and from the place at which this Honorable Court sits and for defendant's expenses in attendance thereat; and that defendant did not receive due or lawful notice that said moneys tendered by said Orr were for defendant's expenses in attendance at this Honorable Court.

(*e*) Alleges that the affidavit of service required by paragraph 3 of Law Rule 19 of this Honorable Court was not made.

7. Answering paragraph 7 of said Petition for Order to Show Cause, defendant

(*a*) Admits that the trial of said case, Criminal No. 43,324, commenced in this Honorable Court at 10 o'clock A. M., Monday, October 17, 1927, and proceeded until about 12:15 o'clock P. M., on said day; admits said Nathan Miller and George Gordon Battle represented themselves to be attorneys for defendant; admits that the Clerk called "H. M. Blackmer"; that defendant did not respond to said

call; that thereupon said Nathan Miller and said George Gordon Battle appeared (specially as hereinafter alleged) for defendant, and at the request of defendant, for the
64 purpose of stating that defendant was not present in court; admits that a true transcript of the remarks on that occasion of said Owen J. Roberts, this Honorable Court and said Nathan Miller is attached to said Petition for Order to Show Cause, is marked Exhibit C, and is made a part of said Petition for Order to Show Cause;

(*b*) Denies that defendant neglected or refused to appear; denies that said Nathan I. Miller and/or said George Gordon Battle, or anyone appeared for the purpose of stating or stated that defendant would not appear in answer to said subpœnas, or either of them; denies that said Nathan Miller and/or George Gordon Battle, requested the Court to have the Clerk call defendant as a witness; denies that the Court so instructed the Clerk; denies that defendant was called as a witness.

(*c*) Alleges that said Nathan Miller and said George Gordon Battle appeared specially in behalf of defendant for the sole purpose of explaining to this Honorable Court why the defendant was not there at said time, and then and there offered to make such explanation, but were not permitted by this Honorable Court so to do.

8. Denies each and every allegation in said Petition for Order to Show Cause not hereinbefore expressly admitted or denied.

And for a first further plea—

Defendant realleges the allegations contained hereinbefore as if here repeated at length; and

Alleges that said Order for Subpoenas and the alleged issuance and alleged services of alleged subpœnas pursuant thereto, referred to in paragraphs "2", "3",
65 and "5" of the said Petition for Order to Show Cause, and the pretended returns of such alleged services, referred to in paragraph "6" of the said petition, and the provisions of the Act of Congress of July 3, 1926, C. 762 (44 Stat. 835) pursuant to which said proceedings were alleged to have been taken, were and are null, void and of no force and effect because they are in conflict with the Constitution of the United States, especially the provision of the Fourth Amendment, providing that the right of the

people to be secure in their persons, houses, papers, and effects, against unreasonable seizures, shall not be violated; the Eighth Amendment, providing that excessive fines shall not be imposed, nor unusual punishments inflicted; the Sixth Amendment, providing that in all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation; the Sixth Amendment, providing that in all criminal prosecutions the accused shall enjoy the right of trial by jury; the Sixth Amendment, providing that in all criminal prosecutions, the accused shall enjoy the right to have compulsory process for obtaining witnesses in his favor, and of the Fifth Amendment, that no person shall be deprived of life, liberty or property without due process of law.

And for a second further plea—

Defendant realleges the allegations contained hereinbefore as if here repeated at length, and

Alleges that said Petition for Order to Show Cause was not verified as required by Law Rule 17 and Equity Rule No. 8 of this Honorable Court.

And for a third further plea—

66 Defendant realleges the allegations contained hereinbefore as if here repeated at length, and

Alleges that the said Order to Show Cause herein is too vague and indefinite to be readily understood and to acquaint defendant with the facts constituting the alleged contempt therein referred to, in the following particulars, to wit:—

Said Order to Show Cause does not specify a single fact constituting grounds for contempt or why the defendant should show cause.

Said Order to Show Cause recites "consideration" by this Honorable Court—

"of the petition heretofore filed by Peyton Gordon, United States Attorney for the District of Columbia, Atlee Pomerene and Owen J. Roberts, Special Counsel for the United States of America."

as the basis for the action therein taken.

But the Petition referred to is not described or identified in the above quoted language; and is not connected by reference or otherwise with this contempt action No. 16; nor

is there anything in said Order to Show Cause serving to place the petition referred to.

Alleges that if defendant is lawfully bound to conjecture which petition is referred to and that such conjecture must inevitably point to the petition herein described and referred to as said Petition for Order to Show Cause, then defendant alleges that it is impossible to tell from said Petition for Order to Show Cause whether the failure to respond to the alleged subpœna alleged to has been
67 served by said Orr, or the alleged subpœna alleged to have been served by said Davis, or whether both, is or are, the basis of this action.

Alleges that neither said Petition considered by this Honorable Court as aforesaid, whatever it may have been, nor a true copy thereof, nor any other petition of counsel above named for the United States, or any of them, accompanied said Order to Show Cause, or was ever duly or lawfully received in any manner by defendant.

And for a fourth further plea—

Defendant realleges the allegations contained hereinbefore as if here repeated at length, and

Alleges that there is nothing in said Order to Show Cause to put the defendant upon due or lawful notice that said Order was issued in accordance with said Act of July 3, 1926, C. 782 (44 Stat. 835); that defendant has never been duly or lawfully informed of the facts constituting his alleged offense herein.

And for a fifth further plea—

Defendant realleges the allegations contained hereinbefore as if here repeated at length, and

Alleges that there are no grounds shown in said Order to Show Cause or in said Petition for Order to Show Cause why the Marshal of the District of Columbia should be ordered to levy upon and seize the property of defendant within the United States of the amount and value of One Hundred Thousand Dollars ($100,000) and to hold the same for the purpose of satisfying any judgment that may be rendered against defendant in this proceeding.
68

And for a sixth further plea—

Defendant realleges the allegations contained hereinbefore as if here repeated at length, and

Alleges that said Order to Show Cause was not accompanied with a copy of said Petition for Order to Show Cause, or an affidavit, or of any notice thereto subscribed; that defendant was not served with said copy; that the purported return of said Order to Show Cause does not show the fact;—all contrary to the provisions of paragraph 1 of Law Rule 19 of this Honorable Court.

And for a seventh further plea—

Defendant realleges the allegations contained hereinbefore as if here repeated at length, and

Alleges that said Order to Show Cause was not published in the Washington Law Reporter, as required by paragraph 4 of Law Rule 19, of this Honorable Court.

And for an eighth further plea—

Defendant realleges the allegations contained hereinbefore as if here repeated at length, and

Alleges that in alleged pursuance of the direction so to do contained in said Order to Show Cause, the Marshal of the District of Columbia on or about the 19th day of November, 1927, made a pretended levy upon and seizure of United States First Liberty Loan Bonds of the par value of $100,000., which were then, at all times since have been, and are now the property of this defendant; that in alleged pursuance of the direction so to do contained in the Order to Show Cause of this Honorable Court, dated December 26, 1928, in United States of America, Plaintiff, vs. Harry M. Blackmer, Defendant, Contempt No. 18, said Mar-
69 shal on or about the 7th day of January, 1929, made a pretended levy upon and seizure of United States First Liberty Loan Bonds of the par value of $100,000, which were then, at all times since have been, and are now the property of the defendant; that the levy and seizure aforesaid in said Contempt No. 18 was upon all of and upon the identical property levied and seized upon as aforesaid in this Contempt No. 16; that plaintiff has abandoned said levy and seizure in this Contempt No. 16.

And for a ninth further plea—

Defendant realleges the allegations contained hereinbefore as if here repeated at length, and

Alleges that no affidavit in connection with the attachment of defendant's property ordered by said Order to Show

Cause was made to comply in statement with the provisions and requirements of Sec. 445 of the Code, as amended by the Act of Congress approved April 19, 1920,—contrary to the provisions of paragraph 1 of Law Rule 9 of this Honorable Court.

And for a tenth further plea—

Defendant realleges the allegations contained hereinbefore as if here repeated at length, and

Alleges that had the testimony of defendant been available at the first trial of United States vs. Harry F. Sinclair and Albert B. Fall, Criminal Docket No. 43,324, and had it conformed to the expectations alleged in said Petition for Order to Show Cause, and had it been admissible, it would have served no practical purpose of said first trial of said Criminal Docket case No. 43,324 ended in a mistrial, and plaintiff suffered no injury through defendant's absence.

70 And for an eleventh further plea—

Defendant realleges the allegations contained hereinbefore as if here repeated at length, and

Alleges that after the alleged service of the pretended subpœnas referred to in paragraph 5 of said Petition for Order to Show Cause, defendant, desiring to perform his legal obligations (if any), obtained opinions in that regard from several attorneys at law of high repute in the United States; that he was advised by each and all of said attorneys after full consideration, that he was not under any such obligation, but that on the contrary, said alleged services and the proceedings purporting to authorize the same, and the provisions of said Act of Congress, were unconstitutional and wholly void and of no force or effect for the reasons hereinbefore mentioned, and relying on such advices that the defendant did not appear according to the purported demand of said pretended subpœnas so allegedly served.

Wherefore defendant prays judgment that he is not guilty of contempt of Court, as charged in said Petition for Order to Show Cause, and directing the release of his property within the United States, heretofore seized or claimed to have been seized by the Marshal purporting to act pursuant to said Order to Show Cause, to wit: $100,000 par

value of First Liberty Loan Bonds, and that this proceeding be dismissed.

Dated, September 7, 1929.

GEO. GORDON BATTLE,
Attorney for Defendant,
Appearing as Hereinbefore Stated.

Fiat.

Sept. 16th, 1929.

Leave granted to file.

F. L. SIDDONS,
Justice.

71 *Joinder of Issue.*

Filed September 16, 1929.

* * * * * * *

And now comes the United States, by its attorneys, Leo Rover, United States Attorney for the District of Columbia, and Atlee Pomerene and Owen J. Roberts, Special Counsel for the United States of America, and joins issue with the defendant upon the allegations of fact contained in paragraphs 1, 2, 4, 5, sub-paragraphs a, b, c, d of 6, and 7 of the defendant's First Plea; and also joins issue with the defendant upon the allegations of fact contained in the defendant's Third Further Plea, Fourth Further Plea, Fifth Further Plea, Eighth Further Plea, Tenth Further Plea and Eleventh Further Plea.

LEO A. ROVER,
United States Attorney.
ATLEE POMERENE,
OWEN J. ROBERTS,
Special Counsel.

72 *Demurrer.*

Filed September 16, 1929.

* * * * * * *

And now comes the United States, by its attorneys, Leo Rover, United States Attorney for the District of Colum-

bia, and Atlee Pomerene and Owen J. Roberts, Special Counsel for the United States of America, and demurs to sub-paragraph e of the 6th paragraph of the defendant's First Further Plea, and also demurs to the defendant's First Further Plea, Second Further Plea, Sixth Further Plea, Seventh Further Plea and Ninth Further Plea, and says that the said Pleas are bad in substance.

LEO A. ROVER,
United States Attorney.
ATLEE POMERENE,
OWEN J. ROBERTS,
Special Counsel.

NOTE.—Among the matters of law intended to be argued in support of the foregoing Demurrer are the following:

1. The provisions of paragraph 3 of Law Rule 19, the provisions of Law Rule 17 and Equity Rule 8, the provisions of paragraph 1 of Law Rule 19, and the provisions of paragraph 4 of Law Rule 19, all of the Supreme Court of the District of Columbia, are inapplicable to the present contempt proceeding.

2. The Act of July 3, 1926, C. 762 (44 Stat. 835) does not violate in any manner the provisions of the Fourth,
73 Fifth, Sixth and Eighth Amendments to the Constitution of the United States or any other provisions thereof.

3. The Act of July 3, 1926, C. 762 (44 Stat. 835) is constitutional and binding upon the defendant.

4. The provisions of paragraph 1 of Law Rule 9 of the Supreme Court of the District of Columbia are inapplicable to the present contempt proceeding.

5. The aforesaid Pleas of the defendant are bad for other reasons on their face.

Memorandum.

September 16, 17, 1929.—Argument of case.

74 *Motion on Pleadings for Judgment.*

Filed September 17, 1929.

* * * * * * *

The defendant herein, by his attorneys appearing especially for that purpose only, having moved this Court to

vacate and set aside the Order to Show Cause herein, dated November 16, 1927, and all proceedings pursuant thereto on the ground that this Court had not and has not jurisdiction of the defendant or jurisdiction of this proceeding for the reason and upon the grounds mentioned in said motion and by order dated April 23, 1928, this Court having overruled and denied the said motion and giving the defendant leave to file his answer herein, and the defendant having filed his plea under protest pursuant to said order of April 23, 1928, reserving all his claims and rights in and under the said motion and the proceedings had thereon, and the United States Attorney for the District of Columbia and Special Counsel for the United States of America having filed on behalf of the United States a Joinder of Issue and a Demurrer, as appears by the record herein.

Now, therefore, the said defendant, reserving all his claims and rights under the said motion and the proceedings had thereon and subject to such protest and reservation, moves by his undersigned attorney upon all the pleadings, proceedings and record herein for judgment that he is not guilty of contempt of court and directing the release of his property within the United States heretofore seized or claimed to have been seized herein by the United States Marshal, and that this proceeding be dismissed upon the following grounds which appear upon the face of the pleadings, proceedings and record herein:

75 1. That the petition of May 13, 1927 herein for the issuance of the subpœnas therein described, hereinafter called said Petition for Subpœnas, shows on its face that it was and is wholly invalid, as any proper or other showing for the issuance of subpœnas directed to the defendant in accordance with the Act of Congress of July 3, 1926, C. 762 (44 Stat. 835), hereinafter referred to as said Act of Congress, for the reason that all allegations therein contained pretending to constitute such showing, are not based upon facts but upon mere unsupported, unverified beliefs of the petitioners; and the said petition for Subpœnas expressly admits that the defendant is beyond the jurisdiction of the United States; the presentation of and the action of this Court on said Petition for Subpœnas were entirely ex parte; the defendant was afforded neither due nor any other notice thereon nor due

nor any other opportunity to be heard therein; and the defendant never received said Petition for Subpœnas or any copy thereof or any due or other notice thereof pursuant to said Act of Congress or to any order of this Court or to any lawfully authorized action of any party whomsoever in or in connection with these proceedings or any of them.

2. The alleged subpœnas directed to the defendant as described in the said Petition for Subpœnas and each of them had nothing on the face thereof to indicate that such subpœnas or either of them were issued or served in any way pursuant to or under the authority of the said Act of Congress, but on the contrary each of the said subpœnas was in the identical form used in this and all other United States Courts before the passage of said Act of Congress and also since the passage of said Act in the usual

76 and ordinary cases in said Court in which the said Act of Congress is not invoked, and therefore the said defendant was not in any way notified by anything that appeared on the face of said subpœna that it was issued under or pursuant to the authority of the said Act of Congress, but on the contrary he was justified in believing from the face of the said subpœnas and from all the facts and proceedings connected therewith that the said subpœnas were the usual subpœnas issued in cases in this and all other United States Courts in which the said Act of Congress is not invoked or concerned; and that by reason of the foregoing the defendant was under no obligation to comply with the directions contained in the said alleged subpœnas.

3. The alleged service of the said subpœnas upon the defendant was wholly illegal, null, void and of no effect, because at the time of such alleged service of each subpœna the proper legal tender was not made to the defendant for his necessary traveling expenses and for his attendance at Court as required by the said Act of Congress, and that the said George Orr, in attempting and pretending to make the alleged tender of $500.00 did not inform the defendant that the same or any part thereof was for his necessary or other expenses in attendance at Court and that the said Raymond Davis in attempting and pretending to make the said alleged tender of $500.00 did not inform the defendant that the same was for his necessary ex-

penses in traveling to and from the place at which this Court sits and/or for his expenses thereat.

4. The said alleged subpœnas and each of them were not issued or served under the authority of said Act of Congress or pursuant to any order of this Court under
77 said Act of Congress; and said alleged subpœnas and each of them contained no notice to defendant that the same were issued under authority of the said Act of Congress and/or pursuant to any order of this Court; that neither the original nor any copy of said Petition for Subpœnas nor said order for subpœnas was served as a part of or in connection with or to accompany said alleged services of said alleged subpœnas or either of them; that no due or lawful notice of any kind was ever furnished defendant that said subpœnas or either of them were issued and/or were served under authority of said Act of Congress or pursuant to any order of this Court.

5. The said pretended returns on their faces show that the said alleged services of said subpœnas and/or the said alleged tenders were none of them due or lawful or had any legal force or effect in that the said returns show that the defendant did not receive due or lawful notice that said alleged subpœnas or either of them and/or said alleged tenders or either of them were pursuant to said Act of Congress and the defendant did not receive due or lawful notice that said moneys alleged to have been tendered by said Davis were for defendant's expenses in traveling to and from the place at which this Honorable Court sits and for defendant's expenses in attendance thereat; and that defendant did not receive due or lawful notice that the said moneys alleged to have been tendered by said Orr were for defendant's expenses in attendance at this Court.

6. The affidavit of service required by Paragraph 3 of Law Rule 19 of this Court was not made.

7. The said Order of Subpœnas and the alleged issuance and alleged services of the alleged subpœnas pur-
78 suant thereto and the said pretended returns and the provisions of the said Act of Congress pursuant to which said proceedings were alleged to have been taken and each and all of the proceedings were and are null, void and of no force and effect because they are in conflict with the Constitution of the United States, especially the pro-

visions of the Fourth Amendment providing that the right of the people be secure in their persons, houses, papers and effects against unreasonable seizures, shall not be violated; the Eighth Amendment providing that excessive fines shall not be imposed, nor unusual punishment inflicted; the Sixth Amendment providing that in all criminal prosecutions the accused shall enjoy the right to be informed of the nature and cause of the accusation; the Sixth Amendment providing that in all criminal prosecutions the accused shall enjoy the right of trial by jury; the Sixth Amendment providing that in all criminal prosecutions the accused shall enjoy the right to have compulsory process for obtaining witnesses in his favor; and the Fifth Amendment providing that no person shall be deprived of life, liberty or property without due process of law.

8. The Petition for the Order to Show Cause herein was not verified as required by Law Rule 17 and Equity Rule 8 of this Court, and also the said Petition was insufficient to justify the issuance of the Order to Show Cause.

9. The said Order to Show Cause was and is too vague and indefinite to be readily understood and/or to acquaint the defendant with the facts constituting the alleged contempt therein referred to, in the following particulars: to-wit, the said Order to Show Cause does not specify a single fact constituting grounds for contempt or why
79 the defendant should show cause.

The said Order to Show Cause recites "consideration" by the Court

"of the Petition heretofore filed by Peyton Gordon, United States Attorney for the District of Columbia, Atlee Pomerene and Owen J. Roberts, Special Counsel for the United States of America"

as the basis for the action therein taken. But the petition referred to is not described or identified in the above quoted language and is not connected by reference nor otherwise with this Contempt Action No. 16 nor is there anything in said Order to Show Cause serving to place the petition referred to. If the defendant is lawfully bound to conjecture which petition is referred to and that such conjecture must inevitably point to the petition herein described and referred to as said petition for Order to Show

Cause, then it is impossible for defendant to tell from said petition for Order to Show Cause whether the failure to respond to the alleged subpœna alleged to have been served by said Orr, or the alleged subpœna alleged to have been served by said Davis, or whether both is or are the basis of this action.

10. Neither the said petition considered by this Court as aforesaid, whatever it may have been, for the Order to Show Cause, nor any copy thereof, nor any other petition of Counsel above named for the United States or any of them, accompanied said Order to Show Cause or was ever duly or lawfully received in any manner by the defendant.

11. There is nothing in said Order to Show Cause
80 to put the defendant upon due or lawful notice that the said Order to Show Cause was issued in accordance with said Act of Congress, and the defendant has never been duly or lawfully informed of the facts constituting his alleged offense herein.

12. There are no grounds shown in said Order to Show Cause or in said petition for Order to Show Cause why the Marshal of the District of Columbia should be ordered to levy upon or seize, or why the said Marshal did make an alleged levy upon and seizure of the property of the defendant within the United States of the amount and value of $100,000.00 and/or to hold the same for the purpose of satisfying any judgment that may be rendered against defendant in this proceeding.

13. The said Order to Show Cause was not accompanied with a copy of said petition for Order to Show Cause or an affidavit or of any notice thereto subscribed; the defendant was not served with said copy; that the purported return of said Order to Show Cause does not show the fact—all contrary to the provisions of Paragraph 1 of Law Rule 19 of this Court.

14. The said Order to Show Cause was not published in the Washington Law Reporter as required by Paragraph 4 of Law Rule 19 of this Court.

15. No affidavit in connection with the attachment of the defendant's property ordered by said Order to Show Cause was made to comply in statement with the provisions and requirements of Section 445 of the Code, as amended by the Act of Congress approved April 19, 1920—contrary to the

provisions of Paragraph 1 of Law Rule 9 of this Honorable Court.

Wherefore and upon the foregoing grounds, the defendant moves on the pleadings, proceedings and record
81 herein for judgment that he is not guilty of contempt of Court and directing the release of his property within the United States heretofore seized or claimed to have been seized herein by the United States Marshal and that this proceeding be dismissed

Dated September 16, 1929.

GEO. GORDON BATTLE,
Attorney for Defendant,
Appearing as Hereinbefore Stated.

82 *Opinion of Siddons, J.*

Filed December 30, 1929.

* * * * * * *

The Court. So far as that rule is concerned, of course, it is controlled by the acts of the legislature. We have more than one example where Congress has prescribed what publication shall take place, and we are not following out our rule. Of course, our rules can be displaced at any time by an act of Congress. They have been more than once. Our standing rules do remain the law, provided they are within the competency of this Court, under the general powers conferred upon it by the Congress to make rules. And if our rules, promulgated in pursuance of the authority thus given, are within the scope of the authority conferred by the legislature, they are as much the law to be applied in the court as any statute. When Congress says, for instance, that publications in this classification shall be thus and so, then our rule gives place to the legislative command.

In this case the Walsh act prescribes publication in a newspaper, not in the Washington Law Reporter. Congress has a right to do that, and displace our rule in that regard. I do not think this court would be justified in saying, in view of this detailed language of the statute, "Well, we are going to require some further and additional publication. We are going to require publication in the

Paris edition of the New York Herald, or the Paris edition of the New York Times. We will require publication in a paper somewhere else—the original home of the respondent here—and we will require it in the Washington
83 Law Reporter." Congress says that publication in some newspaper is enough, and that was done. So, I do not think there is any merit in that contention.

Very briefly going over the matter, of course, a trial court ought to approach a charge of the unconstitutionality of an act of Congress with very great caution and care. We are all familiar with certain canons—shall I call them?—that have been laid down with respect to questions involving the constitutionality of an act of the legislature. There are not wanting those who have said—not courts, but textbook writers—that inferior courts, at least, ought never to undertake to declare an act of the legislature unconstitutional, but should pass it on to the reviewing authority. When I say "inferior courts" I am not referring to an inferior court of general jurisdiction, such as this is. Of course, we are inferior to the Court of Appeals, and we are inferior to the Supreme Court of the United States. We are a court of general jurisdiction, and that jurisdiction includes all the normal powers of a state court of original jurisdiction plus all the powers of a Federal circuit court, and the old Federal circuit in its original form, when it was simply a trial court. We have, in addition, a jurisdiction possessed by no other court in the country that I know of, and we exercise it, for no other reason, I suppose, than that we are here in the Nation's Capital, and can review certain appropriate cases of executive action and indirectly, at least, we can stay the hand of the President. I do not mean to say by direct process against the President, although that question, on civil process, has never been finally determined. As to the heads of departments exercising for the President the executive authority he sees fit to confer upon
84 them, plus certain specific authorities that some of the heads of departments exercise by reason of special acts of Congress, this court can hand down an injunction, a writ of prohibition, or the like, and either prevent or coerce appropriate action by heads of departments who, after all, are acting for the Executive, the President of the United States

This court never hesitates, in a proper case, to declare an act unconstitutional, but it should proceed to the consideration of such contention as to unconstitutionality with great care and caution. If in doubt about the matter this court, I think, ought to sustain the constitutionality of the act and let the reviewing authority determine upon the accuracy or inaccuracy of the court's decision in that regard.

We have before us in this case an unusual piece of legislation, unusual in the sense that, so far as we know, it has no analogous precedent in our legislative history; but that would not make it unconstitutional. It would be a sorry day for us, I think, when new conditions, new problems that occur out of our ever-changing and ever more complicated social order do not require new exercise of powers that we ought to consider, if we can, are within the constitutional competency of that branch of the government that may be undertaking to act in a given case.

Now, in this case, I am obliged to say to counsel for the respondent here that I most certainly consider that among the objections originally made to the constitutionality of this act by him was the claim, or the contention, that in terms, apparently, this Walsh act did not confer the same rights upon a defendant in a criminal case as it gives to the prosecution. I distinctly remember the able brief
85 that was filed in behalf of the respondent in that regard, and the equally able reply on that point of the contention. I think that so far as the constitutionality of this act is concerned, this court remains in the same position as it was before. Counsel for the respondent should look for any correction of that judgment, of course, if it is wrong, to the reviewing court.

As to these other matters, our subpœna, if you will read it carefully, is, in a sense, a command of the President of the United States. It is a command of the President of the United States to the person named as a witness, and it is attested by the Chief Justice of this Court. That is the form in which the subpœna is issued, and, so far as I know, it has always been in that same form in criminal cases. All our subpœnas, in detail, run in that way, as I recall it. Is not that so, Mr. District Attorney?

Mr. Rover: Yes, your Honor.

The Court: I have here a copy of the subpœna issued in this case.

Mr. Roberts: It is Exhibit A of the petition.

The Court: It is just as I recall:

"The President of the United States to H. M. Blackmer, Paris, France:

"You are hereby commanded to attend the said court," and so forth.

The President of the United States is commanding this respondent to attend this court in a case the title of which is set forth, the United States on the one hand, and two defendants on the other. The case is identified by the number of the criminal docket, and the case is identified as effectually as I think it could be identified. The President of the United States commands Blackmer to attend this court on Monday, April 2, 1928, at ten o'clock a. m., to testify on behalf of the United States "and not depart the Court without leave of the Court or Dsitrict Attorney.

86

"Witness, The Honorable Walter I. McCoy, Chief Justice of said Court, January 12, 1928."

The seal of the court is attached, and the clerk, or his deputy, signed it.

Now, then, what intelligent person reading that subpœna could possibly doubt what was expected of him? It was to attend as a witness on behalf of the United States, in a case against the parties named in the title of the suit in the subpœna, to testify on behalf of the United States in this court. He is commanded by the President of the United States to be here on the second day of April, 1928. A copy of that subpœna was served upon him. The consul's return reads:

"George Orr, summoned personally all, the first day of February, 1928.

"H. M. Blackmer, by exhibiting said subpœna personally to the said H. M. Blackmer, reading the same to him and leaving a duplicate copy with him at Paris, France.

"I further certify that pursuant to the order of the court I did at the time of said service tender to the said H. M. Blackmer the sum of five hundred dollars currency of the United States of America, which tender the said H. M. Blackmer then and there refused."

That was the amount declared by this court, acting under specific provisions of the Walsh Act, to be the amount that was regarded as a reasonable one to meet his ex-
87 penses in coming to the court. Does it require the consular officer to specifically state in his return that the $500 was for that purpose, or was ordered by the court prior to the issue of the subpœna? To do so would unnecessarily encumber the records of this court with matter that really does not go to the safeguarding of a written summons under these circumstances at all.

I think I can appropriately say that he could not have supposed that it was a Christmas gift by the President of the United States to him. Probably he had a right to refuse to come unless his mileage was provided, and perhaps his witness fees as well, for the time he would be expected to be in attendance upon this court. I should hesitate very much to hold a person in contempt who, having the subpœna served upon him, said to the officer, "Where are my witness fees? Where is my mileage? Have I got to go from Paris, France, to Washington, D. C. at my own expense?"

It is not suggested that he made any such demand. In the absence of such a demand, the service is perfectly clear. Then contempt proceedings may be predicated on violation of the command of the subpœna, even though the witness fees and mileage were not tendered. There is no suggestion that the witness, in pursuance of his rights, said "Where are my expenses? Where is my mileage, if you are going to drag me from Paris to Washington." He did not do it. There is no suggestion of it. So, I do not think that ground has merit for attack.

Now, as to the notice that this man received of what was going on here, first, he had the command to be here on April 2. It does not make any difference whether he had several other commands to appear on that day. He had this
88 command and he did not obey, according to the record. He did not come in obedience to that command to be here on April 2. What happened on April 2 in the way of continuing the hearing until a later date was none of his concern. He was required to be here on that day, and not to depart until this court or the district attorney gave him permission. He did not come.

Upon his refusal, the fact is made known to this court and an application is made to this court for a rule to show cause.

It is plain here that the application, which took the form of a petition to this court, was not sworn to by counsel. That is not requisite so far as this witness is concerned, so long as he had notice of why he was commanded to be here.

The rule to show cause sets forth:

"Upon the motion of the United States of America, the defendant, H. M. Blackmer, is cited and admonished to appear before this court on the 25th day of February, 1929, at 10 o'clock a. m. and show cause, if any he has, why he the said H. M. Blackmer should not be adjudged guilty of contempt of court in neglecting, failing and refusing to obey the subpœna heretofore issued by said Court and served upon him to appear before this Court as a witness in the case of the United States vs. Harry F. Sinclair and Albert B. Fall, Criminal No. 43,324 on the docket of this Court, the circumstances of which are very fully set out in said motion of plaintiff filed herein and why the said H. M. Blackmer should not be fined and punished therefor according to law."

It is plain that that order does not make specific reference to the facts specifically that required his ap-
89 pearance on April 2. To say that he could have any doubt as to what this order to show cause meant would be to say that he has not the intelligence of a low-grade moron. I do not ascribe anything of the kind to Mr. Blackmer.

Then there is the command to the marshal to levy and seize upon the property of the said H. M. Blackmer "of the amount and value of One Hundred Thousand Dollars ($100,000.00) or so much thereof as may be found, and hold the same until further ordered by the Court for the purpose of satisfying any judgment that may be rendered against H. M. Blackmer in this proceeding."

That was in the nature of security against some penalty or fine that the Court might thereafter impose if it should become satisfied that he had wilfully refused to obey the commands of the rule to show cause. It does not follow that because so much was seized, therefore the fine would

be equivalent to what was seized. That would depend upon what was developed at the hearing. There might be some matters of excuse or justification, or at least of mitigation, that would affect materially, perhaps, the judgment of the court in imposing a fine, or the amount of the fine. I do not think there can be any objection to the sufficiency of that. He knew, too, from this rule to show cause, that the marshal had been ordered, this very day, to seize this property, of the amount and value of one hundred thousand dollars. He knew that.

He knew, too, by this order, that the marshal forwarded to the consul of the United States at Paris, the very consul who had served him with this subpœna, and to the consuls of the United States at any other place in France, or
90 in any other countries where said H. M. Blackmer may be, a copy of this order with a request that such consuls, or any one of them, shall make personal service thereof upon said H. M. Blackmer and make prompt return thereof to the Clerk of this Court, and that the marshal was directed to make personal service of this order upon the said H. M. Blackmer, if he is found in the United States, and make prompt return thereof to the Clerk of this Court.

If the contentions of the able counsel for the respondent here are well founded, it would be well nigh impossible in a proceeding of this kind to get a witness who is a citizen of the United States, who happened to be in a foreign country, into this court to testify.

As for notifying them in advance of applications of this kind, it is an invitation to exclude themselves from any such further orders. It is not to be done for a moment. The administration of justice has its practical aspects, based upon a knowledge of human nature, a knowledge of men and women in the United States, their weaknesses and foibles. Of course, it must always proceed within the Constitution. Every citizen has a right to the safeguards accorded him by that great institution.

We have a great many technicalities to deal with here. That word is sometimes abused. Technicalities may be very sound and substantial. The word is often used very loosely. We sometimes hear it said, "Oh, that case was decided on a technicality"—a technicality that may go to the very heart of the case.

At any rate, what have we? We have a criminal proceeding pending in this court, United States vs. Fall and
91 Sinclair. A witness, a citizen of the United States, at present absent in a foreign country, has personal knowledge of relevant material in the case thus being prosecuted. By the accumulation of other testimony the government may have proved a charge. Congress has declared in such a case, "Now, Mr. Citizen, when you are needed for such a purpose by the Government of the United States you must obey subpœnas therein, in obedience to this act."

I cannot discover that there was a single failure to observe the substantial provisions of this act; and that in so doing, Mr. Blackmer was fully informed. To burden and encumber the record with copies of petitions and motions would be unnecessary. It would be easy enough to have very full notice in the rule to show cause. He could have come on, if he wanted to, and he could then read the motion and petition. This Court said "You come here, sir, and meet this charge, a charge stated in the order, for violation of the subpœna served upon you."

No, Mr. Battle. You must convince some other court of the soundness of your position so far as your pending motion is concerned. The motion is overruled.

92 *Decree.*

Filed October 18, 1929.

* * * * * * *

And now, to wit, October 18th, 1929, the above entitled cause having heretofore come on for hearing before Siddons, J. on September 16th and 17th, 1929, upon petition and rule to show cause, amended plea, joinder of issue and demurrer; and after a full hearing upon the aforesaid pleadings and proofs and evidence adduced by the petitioner, United States, and the respondent, Harry M. Blackmer, and after full argument by counsel upon the demurrer and all questions of law, the petition that the above named respondent be adjudged in contempt is by the Court sustained and the respondent, Harry M. Blackmer, is accordingly found, adjudged and decreed in contempt of Court; and

therefore it is considered, adjudged and decreed by the Court that for his said offense the respondent, Harry M. Blackmer, pay a fine of Thirty thousand dollars ($30,000), together with all the taxable costs of this proceeding; and thereupon the said respondent, by his attorneys, notes an appeal to the Court of Appeals of the District of Columbia from the judgment of the Court in this case; whereupon the Court fixes the amount of bond for costs on appeal at Five hundred dollars ($500) in the above entitled cause, which said bond shall be expressly conditioned that the property of the respondent (being United States Liberty Bonds of the par value of $100,000) heretofore levied upon and seized by the United States Marshal in Washington, D. C., under the order of November 16, 1927, of this Court, and now held by said Marshal to satisfy any judgment that may be rendered against the respondent in this proceeding, shall re-
93 main in the possession and custody of said United States Marshal under said levy and seizure pending the said appeal, and upon the entry of such bond there shall be a stay of proceedings; and in case the judgment appealed from shall be affirmed or the appeal shall be dismissed for any cause, the Court directs that the United States Marshal shall forthwith proceed to sell such of the United States Liberty Bonds of the par value of $100,000 heretofore levied upon and seized under the said order of November 16, 1927, as shall be necessary to satisfy in full the said fine of $30,000, together with all the taxable costs of this proceeding, such sale to be conducted upon the notice required and in the manner provided for sales upon execution.

F. L. SIDDONS,
Justice.

Memoranda.

October 21, 1929.—Undertaking on appeal (supersedeas) $500 approved and filed.

November 8, 1929.—Time to file Bill of Exceptions extended to November 25, 1929, inclusive.

November 25, 1929.—Proposed Bill of Exceptions filed. Notice of time of presentation of Bill of Exceptions and acknowledgment of service.

94 *Assignment of Errors of Defendant Harry M. Blackmer.*

Filed December 18, 1929.

* * * * * * *

The Court erred:

(1) In overruling and denying on April 23, 1928, the motion made by Nathan L. Miller and George Gordon Battle, attorneys for defendant, specially appearing therefor, to vacate and set aside the Order to Show Cause of this Court dated November 16, 1927, and all proceedings pursuant thereto.

(2) In overruling and denying the motion of defendant, on each and every ground specified therein, made at the trial of said cause and prior to the introduction of any testimony, on all the pleadings and proceedings herein for judgment that he is not guilty of contempt as charged herein and directing the release of his property within the United States heretofore seized or claimed to have been seized by the United States Marshal, and that the proceedings be dismissed. (Motion appears at length in Transcript of record and is item No. 21 on the Designation of Record herein.)

(3) In overruling and denying defendant's supplemental motion for judgment on the ground that by the attempted seizure of the same bonds in Contempt No. 18 (United States vs. Harry M. Blackmer—In Contempt No. 18—In the Supreme Court of the District of Columbia Holding a Criminal term) the Government waived and abandoned its seizure in this Contempt No. 16.

(4) In overruling defendant's objection to the taking of any testimony in his absence.

(5) In overruling and denying, on each ground, defendant's motion made at the beginning of the taking of testimony as renewed at the close of the testimony in chief for the United States (Assignment herein No. 2).

95 (6) In overruling defendant's objection to the questions by the United States to the witness George Gordon Battle, during his cross-examination, relating to the state of mind of defendant with respect to certain let-

ters rogatory issued to take defendant's testimony in the case of United States of America, plaintiff, vs. Mammoth Oil Company, a Corporation of the State of Delaware, et al. defendants (in Equity 1431—U. S. Dist. Ct., Dist. of Wyoming).

(7) In overruling and denying defendant's motion made at the close of testimony of both sides that these proceedings be dismissed and that judgment be rendered on behalf of defendant, finding him not guilty of contempt and directing the release of his property, and dismissing these proceedings on each and every ground enumerated in the previous motions (Assignments herein Nos. 2 and 5).

(8) In overruling defendant's objection to any judgment being rendered in his absence.

(9) In declaring and adjudicating defendant to be in conet-mpt of this Court.

(10) In imposing a fine upon defendant of Thirty Thousand ($30,000) Dollars and costs.

(11) In charging the bonds (defendant's) in custodia legis with said fine and costs.

(12) In other respects apparent of record.

GEO. GORDON BATTLE,
Attorney for Defendant.

Service of copy of above assignments of error accepted this 18th day of Dec. 1929.

LEO A. ROVER,
U. S. Attorney.

96 *Designation of Record.*

Filed November 6, 1929.

* * * * * * *

Now comes Harry M. Blackmer, the appellant in the above entitled cause, and designates the parts of the record which he desires to have included in the transcript, said parts being considered sufficient for the determination of the questions raised on appeal, namely:

1. Petition by attorneys for the United States filed May 13, 1927, for issuance of subpœna to James E. O'Neil and H. M. Blackmer under Act of July 3, 1926, in the case of

United States v. Harry F. Sinclair and Albert B. Fall, Criminal No. 43,324.

2. Order dated May 13, 1927, granting subpœnas.

3. Subpœnas dated May 13, 1927, directed to H. M. Blackmer at Paris, France; with return of service and tenders endorsed thereon by George Orr and Raymond Davis, United States Consuls, respectively.

4. Petition of United States attorneys dated November 4, 1927, for rule in contempt and for seizure of property of H. M. Blackmer, including Exhibits A, B and C thereto attached.

5. Order of Siddons, J., dated November 16, 1927, directing defendant Blackmer to appear on Friday, January 6, 1928, and show cause why he should not be adjudged in contempt, directing Marshal to seize and hold his property up to $100,000, and directing publication of said order.

6. Proof of publication of above order.

7. Transcript of proceedings, showing the witness H. M. Blackmer was called and that his counsel explained
97 to the Court that said H. M. Blackmer would not be present.

8. Return of Marshal to order of November 16, 1927, with endorsements thereon, and schedule of levy by Marshal on first Liberty Bonds of the par value of $100,000, property of said H. M. Blackmer, with appraisal of said bonds.

9. Special appearance of Nathan L. Miller and George Gordon Battle, and motion of defendant to vacate order of November 16, 1927, with affidavits of George Gordon Battle dated December 30, 1927, and Henry M. Blackmer dated January 2, 1928.

10. Order of Siddons, J., continuing hearing on rule to February 27, 1928, later continued to March 3, 1928.

11. Memo docket entry showing hearing on motion to vacate.

12. Return showing service of copy of order of November 16, 1927, on H. M. Blackmer in Paris, France.

13. Opinion of Siddons, J., on motion of defendant to set aside order of November 16, 1927.

14. Order of Siddons, J., overruling motion to vacate

order of November 16, 1927, with leave for defendant to file answer within twenty days.

15. Original plea of defendant and appearance of Nathan L. Miller and George Gordon Battle.

16. Joinder in issue on defendant's first plea.

17. Demurrer to defendant's further pleas.

18. Amended plea by leave of Court.

19. Joinder in issue of the United States on certain paragraphs of defendant's first pleas; also to third, fourth, fifth, eighth, tenth and eleventh pleas. Demurrer of United States to first further pleas (paragraph six); also to first,
98 second, sixth, seventh and ninth further pleas.

20. Memo docket entry showing hearing and trial.

21. Motion of defendant on pleadings for judgment.

22. Opinion of Siddons, J.

23. Decree adjudging respondent in contempt and ordering payment of fine of $30,000 and costs; appeal noted in open court from said decree; bond for costs fixed at $500, bonds seized under attachment to remain in custody of marshal.

24. Undertaking on appeal.

25. Bill of exceptions.

26. Notice of submission of bill of exceptions for settlement and approval.

27. Memo, bill of exceptions settled and approved.

28. Bill of exceptions.

29. Assignment of errors.

30. This designation of record.

GEO. GORDON BATTLE AND
SHERLEY, FAUST AND WILSON,
Attorneys for Appellant, H. M. Blackmer.

(Endorsed.)

Service of a copy of the within Designation of Record is acknowledged this 6th day of November, 1929.

LEO A. ROVER,
Attorney for the United States.

99 *Memorandum.*

January 6, 1930.—Bill of Exceptions submitted.

Supreme Court of the District of Columbia, Wednesday, January 15, 1930.

The Court resumes its session pursuant to adjournment, Mr. Justice Gordon, presiding.

* * * * * * *

Now comes here the respondent by his attorney Geo. Gordon Battle, Esquire, and prays the Court to sign and make a part of the record his Bill of Exceptions taken during the trial of the case and submitted to the Court on the 6th day of January, 1930, which is accordingly done, *nunc pro tunc.*

100 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 99, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in Contempt Cause No. 16, wherein United States is Plaintiff and Harry M. Blackmer is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 29th day of January, 1930.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk.

101 In the Supreme Court of the District of Columbia,
Holding a Criminal Term.

In Contempt. No. 16.

THE UNITED STATES

vs.

HARRY M. BLACKMER.

Amended Bill of Exceptions.

Be it remembered that at the trial of this cause commencing September 16, 1929, and terminating September 17, 1929, before Honorable Frederick L. Siddons, Justice, holding Criminal Court Number 2, proceedings were had and rulings made by the Court and exceptions taken and allowed on behalf of defendant as follows:

There appeared on behalf of the United States, Atlee Pomerene and Owen J. Roberts, Esqs., special counsel, and Honorable Leo A. Rover, United States Attorney in and for the District of Columbia. On behalf of defendant, George Gordon Battle, Esq., of New York, New York, and Eugene D. Millikin, Esq., of Denver, Colorado.

Mr. Battle: In the first proceeding (Contempt No. 16) we have filed an amended plea and we served that on the Clerk some days ago and gave copies to Senator Pomerene and Mr. Roberts, asking permission to file that amended plea and we now move for leave to file that plea.

Mr. Roberts: I shall withdraw my objection to his filing the amended plea, agree that he may do it, and now file demurrers, replication and joinders of issue as before.

The Court: Now, Mr. Battle, you are submitting, and have had leave to file, a motion in No. 16 similar to the motion in No. 18, which asked for a dismissal of the case on all the pleadings.

Mr. Battle: Yes, sir; on the proceedings and the record.

The Court: That petition has been filed, formally
102 submitted, and the objection is sustained. The motion is denied.

Mr. Battle: I make the motion on each and every ground specified therein, and I respectfully except to the overrul-

ing of the motion on each ground, and ask that a separate exception be noted.

(Motion appears at length in transcript of record and is item No. 21 on the Designation of Record herein.)

Mr. Battle: I will now make a supplemental motion for judgment on the ground that by the attempted seizure of the same bonds in Contempt No. 18 the Government waived and abandoned its seizure in Contempt No. 16. There is a dilemma there. If the Government seized anything in Contempt No. 18, then it abandoned its seizure, under the authorities in Contempt No. 16. If there was nothing for it to seize, then its attempted seizure in Contempt No. 18 was a nullity. I make the motion, in Contempt No. 16, that by its attempted seizure in Contempt No. 18, it abandoned its seizure in No. 16.

The Court: When the parties are the same, and the plaintiff, or the prosecutor in this case, complains of two distinct offenses, or violations of the law, the defendant refusing to obey two distinct subpœnas at different times, the amount of property of his seized here may be applied to the penatly exacted of him in each of those cases. The objection is overruled.

Mr. Battle: Our position is that where the Government, in the same matter, seeks to levy upon one lot of bonds to the full value of that lot, and then, upon an identical cause of action, a second cause of action of an identical character, in the same matter, seeks to levy on that same lot again, it thereby abandons the first levy if the second levy is to be effective. It is one or the other horn of the dilemma.

I respectfully except to your Honor's ruling.

Mr. Battle: I also object to taking any testimony in Contempt No. 16 in the absence of the defendant.

103 The Court: The same ruling.

Mr. Battle: I understand your Honor makes the same ruling and grants me an exception.

Mr. Roberts: If your Honor please, will it be admitted that Consul Davis was the Consul of the United States?

Mr. Battle: Can you offer testimony of the same character?

Mr. Roberts: I can offer the same record proof as to Mr. Davis as was offered with respect to Mr. Orr, covering the

periods involved in that Contempt proceeding. The witnesses and certificates are here.

Mr. Battle: We accept Mr. Roberts' offer.

Mr. Roberts: Then the stipulation stands in lieu of proof?

Mr. Battle: Yes.

Mr. Roberts: In that event the Government again closes its case.

Mr. Battle: I renew the motion made at the beginning of the taking of the testimony (motion on pleadings and proceedings for judgment), on each ground, and respectfully except to the ruling of the Court on each ground.

The Court: I must rule against you.

Mr. Battle: We now offer evidence on the Eighth Further Plea, which alleges:

"That in alleged pursuance of the direction so to do contained in said Order to Show Cause, the Marshal of the District of Columbia on or about the 19th day of November, 1927, made a pretended levy upon and seizure of United States First Liberty Loan Bonds of the par value of $100,000, which were then, at all times since have been, and are now the property of this defendant; that in alleged pursuance of the direction so to do contained in the Order to Show Cause of this Honorable Court, dated December 26,

104 1928, in United States of America, plaintiff, vs. Harry M. Blackmer, defendant, Contempt No. 18, said Marshal on or about the 7th day of January, 1929, made a pretended levy upon and seizure of United States First Liberty Loan Bonds of the par value of $100,000, which were then, at all times since have been, and are now the property of the defendant; that the levy and seizure aforesaid in said Contempt No. 18 was upon all of and upon the identical property levied and seized upon as aforesaid in this Contempt No. 16; that plaintiff has abandoned said levy and seizure in this Contempt No. 16."

I will ask leave to submit proof, unless the Government counsel will stipulate to that effect, that the bonds alluded to in this Eighth Further Plea were the property of the defendant, Harry M. Blackmer, and that they were the same identical bonds that were seized in both proceedings. There is no question about that, as I understand it.

Mr. Roberts: So, I think I can withdraw the objection and let those facts be stipulated as facts, and argue the legal conclusions that arise from them.

Mr. Battle: We understand, then, your Honor, that it is stipulated that the bonds mentioned in the Eighth Further Plea were and are the property of Mr. Harry M. Blackmer, the defendant, and that the same lot of bonds was seized in both proceedings, Contempt No. 16 and Contempt No. 18.

Mr. Battle: We now go on to the Tenth Further Plea as follows:

"That had the testimony of defendant been available at the first trial of United States vs. Harry F. Sinclair and Albert B. Fall, Criminal Docket No. 43,324, and had it conformed to the expectations alleged in said Petition for Order to Show Cause, and had it been admissible, it would have served no practical purpose for said first trial
105 of said Criminal Docket Case No. 43,324 ended in a mistrial, and plaintiff suffered no injury through defendant's absence."

Mr. Roberts: You wish to prove that the first Sinclair trial ended in a mistrial?

Mr. Battle: Correct.

Mr. Roberts: That being the trial for which the subpœna in this case was issued.

Mr. Battle: Yes.

Mr. Roberts: If you will admit that it ended in a mistrial after Mr. Blackmer was called in open court and failed to respond and you and Governor Miller stated that he would not be present, and you desired to explain why not, I will state that it did thereafter end in a mistrial.

Mr. Battle: That is correct.

Mr. Roberts: All right. Let the stipulation be taken.

The Court: Of course, there is a conclusion here, "and plaintiff suffered no injury through defendant's absence."

Mr. Battle: That is a conclusion, we do not ask for any concession to that, of course.

Mr. Roberts: We merely stipulated that it ended in a mistrial after the witness failed to appear.

Mr. Battle: We claim that as a consequence, but we do not claim it to be a provable fact.

Mr. Battle: The Eleventh Plea, in which Blackmer offers, as a defense, that he acted under advice of counsel was covered by evidence already submitted in Contempt No. 18. I will ask our friends to stipulate——

Mr. Roberts: May it be stipulated on the record that Mr. Battle's examination and cross examination in Contempt No. 18 may be considered as if regiven in this case?

Mr. Battle: That is what I was going to suggest.

106 Mr. Roberts: I agree.

The examination and cross-examination referred to was as follows:

"Mr. Battle: If your Honor please, I now will take up the Eleventh Further Plea. The issue is joined on that. That plea reads:

"'That after the alleged service of the pretended subpœna referred to in paragraph 5 of said Petition for Order to Show Cause, defendant, desiring to perform his legal obligations (if any), obtained opinions in that regard from several attorneys-at-law of high repute in the United States; that he was advised by each and all of said attorneys after full consideration, that he was not under any such obligation, but that on the contrary, said alleged service and the proceedings purporting to authorize the same, and the provisions of said Act of Congress were unconstitutional and wholly void and of no force for the reasons hereinbefore mentioned, and relying on such advice defendant did not appear according to the purported demand of said pretened subpœna so allegedly served.'

"Whereupon **George Gordon Battle** was called as a witness on behalf of defendant, and, having been first duly sworn, testified as follows:

"My name is George Gordon Battle. I am an attorney-at law, and have been practicing for about forty years.

"Mr. Pomerene: We will admit that the witness is eminent counsel.

"The Court: I think there is no question as to Mr. Battle's qualifications. I assume that special counsel are

107 agreed that he is a qualified witness.

"Mr. Pomerene: Certainly.

"Mr. Battle: I was in Paris, France, in the summer of 1927, just after these subpœnas had been served on Mr. Blackmer and saw Mr. Blackmer there at that time. I discussed with him the constitutionality of the Walsh Act and of the procedure under the Walsh Act, and advised with him as to what his action should be with respect to responding to the subpœna mentioned in the Petition for the Order to Show Cause in Contempt No. 18. I told him that we had considered very carefully the question of the constitutionality of the Walsh Act; that we had obtained opinions on it of several different lawyers, including Mr. Henry McAllister of Denver, Colorado, a lawyer of great distinction and eminence; Mr. Karl C. Schuyler, also of Denver, Colorado, a distinguished lawyer; Mr. George E. Holmes, of New York, a distinguished and well known lawyer of the New York Bar.

"The Court: Where was Mr. Blackmer's original native city or state?

"Mr. Battle: He came originally from Massachusetts, your Honor. He went West on account of his health when he was a young man, and went first to Cripple Creek, I think, in the early days, and Colorado Springs. He was an attorney-at-law there.

"The Court: Where was he living in the United States when he left the United States to go abroad?

"Mr. Battle: Denver. That was the occasion for my consulting these Denver counsel. I told Mr. Blackmer that the advice of all these lawyers, their opinions and my opinion, the opinion of Mr. Millikin, and of my own partners, all of whom had carefully examined the Act, was that the Act was unconstitutional and therefore that the sub-
108 pœna was not a valid obligation upon him. Mr. Blackmer said he wanted our advice and would rely upon it. I also told him that Senator Charles S. Thomas of Colorado had given an opinion that in his judgment the Walsh Act was entirely unconstitutional. Mr. Blackmer said he would depend upon and follow the advice we gave him at that time. Later, after the subpœnas issued and the proceedings had started, I told Mr. Blackmer that Governor Miller had examined the Act and that he gave the same opinion. I advised Mr. Blackmer that the Act was

unconstitutional, that it was void, and that the whole proceedings under it would be void.

"Cross-examination.

By Mr. Roberts:

"Mr. Battle: Mr. Blackmer was a lawyer and I was his counsel even considerably before this subpœna went out. I knew that letters rogatory were issued to take his testimony in the suit in Wyoming.

"Mr. Roberts: And you knew that he refused to give more than his name and age?

"Mr. Millikin: Your Honor, I object to the question as incompetent, irrelevant and immaterial. The Wyoming case is not in this proceeding.

"Mr. Roberts: I want to show this man's mind toward his Government, his willingness to serve it, and his unwillingness to serve it. If this is offered in mitigation, if your Honor please, your Honor has a right to know what this man's attitude was.

"Mr. Millikin: This is offered as a part of the pleadings and answer of this defendant. Under the testimony that has been permitted, it is not mitigatory at all.

"Mr. Roberts: It would be anything but mitigation. Your Honor is familiar with the Chapman case. Your
109 Honor is familiar with the Sinclair case, and the Cook case. The order of proof is immaterial here. We did not object to it because we knew he would be allowed to state it. It cannot be a defense when a man deliberately asks his lawyer to advise him, and says, 'on that advice I will not obey the order of the court.' That cannot be a defense. If that were true, every man who was ever summoned into court would get out of his obligation by hiring some lawyer and paying him, and taking his opinion that he did not have to come.

"The Court: I judge, from the character of the question put, to which objection is made, that it is designed to bring out the fact that Mr. Blackmer had refused any information about himself. As I understood the objection, he refused to give his name.

"Mr. Roberts: No. He gave his name and age, and then refused to answer any further questions.

"Mr. Millikin: If your Honor please, we object——

"The Court: Was this prior——

"Mr. Roberts: This was prior to this subpœna. It was in the suit of United States versus Mammoth Oil Company, Mr. Sinclair's company, of the District of Wyoming, in which the same plaintiff was seeking civil remedy on the same question for which it sought criminal remedy in this court.

"The Court: State your objection again, please, Mr. Millikin.

"Mr. Millikin: We object to the line of questioning for the reason that the suit referred to by Mr. Roberts has no connection whatever with these proceedings. Second, that the state of mind of the defendant in another proceeding has no relevancy to the issues in this case. Third, that the testimony being offered here is not by way of mitigation, but was a part of the defense set out in the answer
110 of this defendant, and that the objection comes too late. If we are going to go into what Mr. Blackmer's mind was in the Mammoth case at Cheyenne, that involves a very vast record that ought to be brought here so that we will know exactly what was said there, and to be properly introduced. I do not take it we are here for that purpose.

"The Court: As I understood the purport of the question on cross examination, it was merely designed to bring out the fact, from Mr. Battle, that Mr. Blackmer, the witness in this case, desired by the Government, was desired by the Government, as a witness in a civil proceeding.

"Mr. Millikin: Yes.

"The Court: At an earlier date, prior to these proceedings; and that beyond giving his name and age, he declined to testify in the case. I do not know under what circumstances; whether this declination of his occurred in the execution of letters rogatory.

"Mr. Roberts: I will ask Mr. Battle. He knows all about it. He can tell us.

"The Court: Suppose you do that.

"Mr. Roberts: Mr. Battle, you were Mr. Blackmer's counsel——

"Mr. Millikin: Has your Honor ruled on my objection?

"The Court: Not yet.

"Mr. Roberts: You were Mr. Blackmer's counsel when the case of United States vs. Mammoth Oil Company, and others, was being tried in the District Court of Wyoming, were you not?

"Mr. Battle: I was Mr. Blackmer's counsel.

"Mr. Roberts: And you were attending that trial as his counsel, and observing that trial for him throughout, were you not?

111 "Mr. Battle: At Cheyenne.

"Mr. Roberts: And you know that that was an equity case, founded on allegations of fraud and conspiracy against the Mammoth Oil Company, and asking for the cancellation of the Teapot Dome lease, do you not?

"Mr. Millikin: I object. I take it, your Honor, that my objection goes to all these questions.

"Mr. Roberts: These are preliminary.

"The Court: I had reserved ruling on your original objection because I made the suggestion to counsel that I wanted to know more about the circumstances under which it is said that Blackmer declined to testify in the civil suit, before I ruled on your objection as to the relevancy.

"Mr. Millikin: I would like to have the record show our objections to these preliminary questions, because they are bringing in and developing, through the answers of the witness, the very things we are objecting to.

"Mr. Roberts: Mr. Battle, answer my last question.

"The Court: I will overrule that objection.

"Mr. Millikin: I note an exception, your Honor.

"Mr. Battle: Yes, sir, I think that correctly states it. As Mr. Blackmer's counsel I am familiar with the fact that in the bill of the Mammoth Oil Company case, Mr. Sinclair was charged, amongst other things, with conspiracy with Mr. Fall, as in the criminal cases; that there was an application made to the United States District Judge at Cheyenne to take the testimony of Mr. Blackmer on the issues, amongst others, of conspiracy to defraud the United States; that letters rogatory were issued by Judge Kennedy, of that court, addressed to a French Court to examine Mr. Blackmer before them on certain questions propounded by the Government touching this alleged conspiracy.

112 "By Mr. Roberts:

"Q. And you know that you went abroad and advised with Mr. Blackmer at that time? A. I was abroad at that time.

"Q. And as a result of this, when the letters rogatory were exposed to Mr. Blackmer and the questions propounded to him by a French judge of a French court, he answered the first two questions, that his name was Harry M. Blackmer, and gave his age, and then said he refused to answer any further questions of the Government on the matter. That is correct, is it not? A. He declined to make any further answer, and the court sustained his declination.

"Q. Then, under your advice, he refused in the civil matter to give the Government the benefit of his testimony. Am I right? A. No; I advised him as to his legal rights."

"Mr. Millikin: It is now past the preliminary stage, if it please your Honor.

"The Court: Nothing is going in that affects your original objection, which is still pending and to be decided.

"By Mr. Roberts:

"Q. Coming to the question of this subpœna issuing out of this criminal court, you of course said to Mr. Blackmer that the penalty, if you should be wrong in your opinion, would be a contempt proceeding and punishment of him for contempt, did you not? A. He knew the provisions of the Act. I told him the provisions of the Act.

"Q. Therefore he was entirely familiar and you discussed the fact that if you and this other array of
113 legal gentlemen were wrong he must suffer the penalty? A. He knew the provisions of the Act. I cannot say we specifically discussed them.

"Q. Did you discuss what would probably be done to him if you were wrong in your views? A. I recall distinctly telling him what the provisions of the Act were, and to that extent——

"Q. Then so far as his action can be characterized, it was absolutely deliberate, was it not—after the fullest consideration? A. He gave it the most careful consideration.

"Q. Mr. Roberts, that is all, sir. A. That is all, sir.

"The Court: That brings us to the consideration of your original objection."

"Mr. Millikin: Will your Honor now rule on the objections as made?

"The Court: Your original objection?

"Mr. Millikin: Yes, your Honor.

"The Court: As the matter appeals to me, it is in this wise. We are hearing simply the allegations of contempt of the process of this court in this criminal proceeding, the refusal of the witness to obey the subpœna that was issued and served upon him; and the testimony that Mr. Battle has given us shows that in another and earlier proceeding, a civil proceeding in which, allowing for the difference between the one being civil and the other criminal, the basis of both is essentially the same. The charge was conspiracy to defraud. That was the indictment was it not? And that seems to have been the basis in part, at least, of the civil proceeding instituted, in which civil proceeding Blackmer was to be examined as a witness for the Government
114 and he declined to give his testimony. We do not have precisely the same situation. In one case we have Blackmer refusing in the criminal case to obey the subpœna issued by this court. Mr. Battle has given his testimony as to how that came about, that it was under his advice as counsel that Blackmer refused obedience to the summons. He has stated the reasons which actuated him in giving that counsel and advice to Blackmer.

"We have a rule of evidence that it seems to me is applicable here, that while we may not establish the guilt of a person in one case by reason of the fact that he has been guilty of similar acts, ordinarily, when the question on trial is one that involves intent, motive, purpose, a state of mind, then light is shed upon that state of mind by similar acts or substantially similar acts by the party involved; and the fact that in this somewhat earlier civil proceeding involving, as I have said, and as I understand the matter, practically the same predicate for the assertion by the Government in this civil proceeding that is made here in the indictment in this criminal case, it is competent to consider it with reference to whether as a matter of mitigation or as a matter of absolute defense it is a defense that should be

considered by the court in this case. I think the evidence is competent on cross examination.

"Mr. Battle: If your Honor will permit me to say that it might be inferred from what your Honor has said that your Honor was of the opinion that these other lawyers and myself had advised Mr. Blackmer not to obey the subpœna and not to come to court. That is not the fact.

"The Court: I did not think so. Your testimony was that you gave him your best opinion as to this Act and the proceedings under it.

"Mr. Battle: That is correct.

115 "The Court: I did not understand from your testimony that you, a lawyer and a member of the bar, told this man to violate a court order.

"Mr. Battle: None of the lawyers were asked on that point. We were asked to give our opinion on the constitutionality of that Act, and that we gave.

"The Court: I understand that; and I understood your testimony to be this, that having given your opinion that the Act was void, and therefore the proceedings under it were void——

"Mr. Battle: He asked us for our opinion and we gave it. I would also say in regard to the letters rogatory that Mr. Blackmer depended upon the opinion of French counsel that he was not under any obligation to answer the questions addressed to him in the French Court.

"Mr. Pomerene: That was under French jurisprudence.

"The Court: I remain of the opinion that counsel have not gone beyond the legitimate scope of cross examination in this case with respect to this single point, and I think your objection would be overruled.

"Mr. Millikin: I have an exception, please."

"By Mr. Millikin:

"Q. I would like to ask you, Mr. Battle, whether you did tell Mr. Blackmer that Senator Thomas, Mr. Schuyler, Mr. McAllister, Mr. Levy and Mr. Holmes had advised the same? A. I did.

"The Court: He did say that, and he has just now added that French counsel advised similarly.

"The Witness: As to letters rogatory; that being the proceeding in the French court.

"The Court: The French was the functionary authorized under our act of Congress to execute the letters rogatory.

116 "By Mr. Roberts:

"Q. Is it not the fact that French counsel advised that the French courts under their law had no power to compel Mr. Blackmer to reply, and that if he stood silent he could not be punished under the French law? A. The French counsel advised that he was under no obligation to answer.

"Q. Did they not advise that if he did not answer he could not be punished under French law? A. I do not recall that he did.

"Mr. Roberts: That is all."

Mr. Battle: If your Honor please, that closes our evidence in Contempt No. 16.

Mr. Pomerene: Now, if the Court please, we move for judgment for the Government against the defendant in each of these cases on pleadings and the evidence as submitted.

The Court: Before we come to that let me understand. You have no evidence to offer in reply,

Mr. Pomerene: No.

Mr. Battle: I move, if your Honor please, on behalf of the defendant, that these proceedings be dismissed, and that judgment be rendered on behalf of defendant, finding him not guilty of contempt and directing the release of his property, and dismissing these proceedings on each and every ground enumerated in the previous motions.

The Court: Your motion is overruled, Mr. Battle, for the dismissal of the whole proceedings now.

Mr. Battle: I respectfully except, and ask that an exception be noted to the denial of the motion on each ground, on each ground. I note a separate exception on each ground.

Then, for the purpose of the record, your Honor, I object to any judgment being rendered here in the absence
117 of defendant, to preserve my rights on that point.

The Court: On that ground, of course, your objection is overruled.

Mr. Battle: I except, your Honor, that exception goes to both proceedings, Contempt No. 16 and No. 18.

The Court: Yes.

The Court then proceeded to render its decision, saying in its opinion:

"The Court has no difficulty at all in determining that Mr. Blackmer has been guilty of contempt of this Court, and now formally declares and adjudicates Blackmer to be in contempt of this Court, under both proceedings, No. 16 and No. 18, which have been the subject of our consideration for the last two days."

The Court then proceeded to consider the penalty which should be imposed, saying:

"I think that in No. 16 the penalty that must be imposed is that of $30,000 and costs, and the funds or bonds in custodia legis will be charged with that fine of $30,000 in costs in No. 16; and in No. 18 the penalty is the same."

Mr. Battle: If your Honor please, I respectfully note an exception to the judgment of the Court and we will note an appeal, your Honor.

It was agreed that a supersedeas bond should be fixed in the sum of $1,000, with a proviso in the bond that nothing in it shall release the bonds from the present custody.

And be it remembered that:

The foregoing contains the substance of all the testimony given at the trial of said cause bearing upon the exceptions herein reserved on behalf of defendant, and each and all of the exceptions stated to have been taken by the de-
118 fendant were so taken, and were duly allowed by the Court and entered upon the minutes of the Court; and in order that each and all of said exceptions may be preserved and made a part of the record in this cause, this Bill of Exceptions is duly dated, approved, signed and or-

dered to be made of record in the above entitled cause this 15th day of January 1930.

F. L. SIDDONS,
Justice.

Approved:
LEO A. ROVER,
United States Attorney.
ATLEE POMERENE,
Special Counsel.
OWEN J. ROBERTS,
Special Counsel.
GEO. GORDON BATTLE,
Attorney for Defendant.

119 [Endorsed:] In the Supreme Court of the District of Columbia. The United States vs. Harry M. Blackmer. In Contempt. No. 16. Amended bill of exceptions. (Original.) George Gordon Battle, Attorney for Defendant, 37 Wall Street, New York City.

Endorsed on cover: District of Columbia Supreme Court. No. 5131. Harry M. Blackmer, appellant, vs. United States. Court of Appeals, District of Columbia. Filed Jan. 29, 1930. Henry W. Hodges, Clerk.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

Monday, February 2nd, A. D. 1931.

* * * * * * *

It is ordered by the Court that, due to the disqualification of Mr. Chief Justice Martin, the Honorable Joseph W. Cox, Associate Justice of the Supreme Court of the District of Columbia, be, and he is hereby, designated to sit as a member of this Court in the hearing and decision of the following cases on its Calendar, namely, Nos. 5131, 5132, and 5171, January Term, 1931.

Charles H. Robb, Josiah A. Van Orsdel, Associate Justices.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

Tuesday, February 3rd, A. D. 1931.

* * * * * * *

No. 5131

HARRY M. BLACKMER, Appellant,

v.

UNITED STATES.

and No. 5132

HARRY M. BLACKMER, Appellant,

v.

UNITED STATES

On motion, the Appellant is allowed to file a reply brief herein with leave to Appellee to reply, and the time for argument is enlarged to two hours on each side.

The argument in the above entitled causes was commenced by Mr. Karl C. Schuyler, attorney for Appellant, and was continued by Mr. Atlee Pomerene, attorney for the Appellee.

* * * * * * *

Wednesday, February 4th, A. D. 1931.

* * * * * * *

No. 5131

HARRY M. BLACKMER, Appellant,

v.

UNITED STATES

and No. 5132

HARRY M. BLACKMER, Appellant,

v.

UNITED STATES

The argument in the above entitled causes was continued by Mr. Atlee Pomerene, attorney for the Appellee, and was concluded by Mr. George Gordon Battle, attorney for the Appellant.

Mr. Chief Justice Martin took no part in the hearing of these cases.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

Nos. 5131, 5132

HARRY M. BLACKMER, Appellant,

v.

UNITED STATES

(Before Robb and Van Orsdel, Associate Justices, and Cox, Associate Justice of the Supreme Court of the District of Columbia)

Mr. Justice ROBB delivered the Opinion of the Court:

In No. 5131 appellant, Harry M. Blackmer, was adjudged guilty of contempt of the Supreme Court of the District in failing to respond to a subpœna to appear on October 17, 1927, as a witness on behalf of the United States at the

trial of Harry F. Sinclair and Albert B. Fall in that Court on a criminal charge of having conspired to defraud the United States in violation of Sec. 39 of the Criminal Code.

In No. 5132, a mistrial of the Sinclair-Fall conspiracy case having been declared on November 2, 1927, appellant was again subpœnaed to appear on Monday, April 2, 1928, as a witness on behalf of the United States at the retrial of the case. Again he failed to appear. He was also found guilty of contempt of the Supreme Court of the District because of that failure.

The issuance and service of the subpœnas and the proceedings in each contempt case were under the provisions of the Act of July 3, 1926 (c. 762, 44 Stat. 835, U. S. C., Sup. IV, Tit. 28, Secs. 711-718).

Sec. 1 of that Act provides that whenever letters rogatory shall issue out of any court of the United States, addressed to any court of any foreign country, to take the testimony of any witness, he being a citizen of the United States or domiciled therein, and such witness, having been personally notified, neglects to appear, the court out of which such letters issued may authorize the issuance of a subpœna addressed to any consul of the United States within any country in which such witness may be, commanding such witness to appear before the court at a time and place therein designated.

The remaining sections read as follows:

"Sec. 2. Whenever the attendance at the trial of any criminal action of a witness, being a citizen of the United States or domiciled therein, who is beyond the jurisdiction of the United States, is desired by the Attorney General or any assistant or district attorney acting under him, the judge of the court before which such action is pending, or who is to sit in the trial of the same, may, upon proper showing, order that a subpœna issue, addressed to any consul of the United States within any country in which such witness may be, commanding such witness to appear before the said court at a time and place therein designated.

"Sec. 3. It shall be the duty of any consul of the United States within any country in which such witness may be at the request of the clerk of the court issuing any subpœna

under this Act or at the request of the officer causing such subpœna to be issued, to serve the same personally upon such witness and also to serve any orders to show cause, rules, judgments, or decrees when requested by the court or United States marshal, and to make a return thereof to the court out of which the same issued, first tendering to the witness the amount of his necessary expenses in traveling to and from the place at which the court sits and his attendance thereon, which amount shall be determined by the judge on issuing the order for the subpœna and supplied to the consul making the service.

"Sec. 4. If the witness so served shall neglect or refuse to appear as in such subpœna directed, the court out of which it was issued shall, upon proof being made of the service and default, issue an order directing the witness to appear before the court at a time in such order designated to show cause why he should not be adjudged guilty of contempt and be punished accordingly.

"Sec. 5. Upon issuing such order the court may, upon the giving of security for any damages which the recusing witness may have suffered, should the charge be dismissed (except that no security shall be required of the United States), direct as a part of such order that the property of the recusing witness, at any place within the United States, or so much thereof in value as the court may direct shall be levied upon and seized by the marshal of said court in the manner provided by law or the rule of the court for a levy or seizure under execution, to be held to satisfy any judgment that may be rendered against such witness in the proceeding so instituted.

"Sec. 6. The marshal, having made such levy, shall thereupon forward to the consul of any country where the recusing witness may be a copy of the order to show cause why such witness should not be adjudged guilty of contempt with the request that said consul make service of the same personally upon the recusing witness, and shall cause to be published such order to show cause and for the sequestration of the property of such witness, in some newspaper of general circulation in the district within which the court issuing such order sits, once each week for six consecutive weeks.

"Sec. 7. On the return day of such order or any later day to which the hearing may by the court be continued, proof shall be taken; and if the charge of recusancy against the witness shall be sustained, the court shall adjudge him guilty of contempt and, notwithstanding any limitation upon the power of the court generally to publish for contempt, impose upon him a fine not exceeding $100,000 and direct that the amount thereof, with the costs of the proceeding, be satisfied, unless paid, by a sale of the property of the witness so seized or levied upon, such sale to be conducted upon the notice required and in the manner provided for sales upon execution.

"Sec. 8. Any judgment rendered pursuant to this Act upon service by publication only may be opened for answer within the time and in the manner provided in Section 57 of the Judicial Code."

On May 13, 1925, in the court below, Sinclair and Fall were indicted for conspiracy to defraud the United States. On May 13, 1927, counsel for the United States filed in that court a petition stating that at the trial of the case they desired the attendance of appellant and another; that appellant was a citizen of and then beyond the jurisdiction of the United States; "that your petitioners believe and therefore aver that the attendance of the said persons at the trial of the said cause is vital and important to the United States, because as your petitioners aver, they believe that the said witnesses have knowledge and information with regard to certain important facts which the United States desires to prove in the said cause, and that their testimony as to said facts will be material in connection with the establishment not only of the conspiracy charged between the defendants in the above captioned cause, but in connection with the proof of overt acts done by the defendants pursuant to said conspiracy. More particularly your petitioners believe and therefore aver that the said * * * and H. M. Blackmer can testify to facts concerning the persons who were in the latter part of the year 1921 and during the year 1922 stockholders of the Continental Trading Company, Ltd., a corporation, and with regard to the distribution by that corporation to its stockholders of certain United States 3½ Liberty Loan

Bonds as dividends, certain of which bonds, as your petitioners believe and therefore aver, were subsequently delivered by or on behalf of one of the defendants, Harry F. Sinclair, to the other defendant, Albert B. Fall."

The petition further prayed the issuance of a subpœna addressed to any Consul General or Consul of the United States within the Republic of France, or within any country in which either of the witnesses might be, "commanding such witness to appear before this Court in Criminal Court No. 2, at the City of Washington, D. C., on the 17th day of October; 1927."

This petition was duly verified by Owen J. Roberts, Special Assistant to the Attorney General, and now an Associate Justice of the Supreme Court of the United States. On the same day the court ordered the subpœna to issue, and fixed and determined at $500 the amount to be tendered to each witness "for his necessary expenses in traveling to and from Washington, D. C., and for his attendance at Court." Thereupon a subpœna in regular form was issued, and on May 27, 1927, was served on appellant by George Orr, Consul of the United States at Paris, France; the consul's return reciting that the service was "at the usual residence of the witness * * *, 25 Avenue Montaigue, Paris, France, and in the presence of Consul Raymond Davis and Mr. Henri Gadd, Attorney for the witness. The witness declined to accept the sum of $500 in United States currency tendered him for traveling expenses. The original copy hereof was left in the hands of the witness." On June 7, 1927, another such subpœna was served on appellant by Raymond Davis, Consul of the United States at Paris, who tendered appellant "the sum of $500 currency of the United States of America" which tender likewise was refused.

On November 4, 1927, counsel for the United States presented a petition to the court below for a rule in contempt, setting forth in detail the proceedings culminating in the failure of appellant to appear as a witness. In addition to the order to show cause, it was prayed that the court direct that the property of appellant within the United States of the amount and value of $100,000, or such other amount and value as to the Court might seem proper, be levied upon and seized by the Marshal of the court "and

held to satisfy any judgment that may be rendered against the said H. M. Blackmer in this proceeding."

On November 16, 1927, the court, on consideration of the foregoing petition, issued an order directing appellant to appear before the court on January 6, 1928, to show cause why he should not be adjudged guilty of contempt and punished accordingly, and that the property of appellant to the amount and value of $100,000 be levied upon and seized by the Marshal to satisfy any judgment that might be rendered against appellant in the proceeding. The order directed that the Marshal of the court making the levy forward to the Consuls of the United States at Paris, France, or in any other countries where appellant might be, a copy of the order, with the request that such Consul or Consuls make service of the same personally upon appellant; and, further, that the Marshal should cause the order to be published in the Washington Evening Star once each week for six consecutive weeks, "in accordance with the provisions of Section 6, c. 762, of the Act approved July 3, 1926, 44 Stat. 835."

The Marshal made return that he had executed the order by levying upon and seizing $100,000 in United States First Liberty Loan Bonds at the par value of $100,000, the property of appellant; and George Orr, Consul of the United States at Paris, France, made return that on the 5th day of December 1927, he had "served a true copy of the within order on the within-named Harry M. Blackmer by delivering said true copy to him". After the levy there was a publication once a week for six consecutive weeks in the Washington Evening Star.

In No. 5132 the verified petition for the issuance of a subpœna was filed on January 9, 1928. The court directed the subpœna to issue, commanding appellant to appear on April 2, 1928. The subpœna issued and was served by Consul Orr on the 1st of February, 1928. $500 in currency was again tendered appellant, and was again refused.

On July 6, 1928, counsel for the United States filed a petition for a rule to show cause, setting forth the proceedings culminating in appellant's failure to respond to the subpœna. An order to show cause was issued but was not served. On December 26, 1928, an alias order was issued commanding appellant to show cause, if any he had, why

he should not be adjudged guilty of contempt of court for failing and refusing to obey the subpœna theretofore issued in the case of United States v. Sinclair and Fall. The order further directed the Marshal of the District to make a further levy upon property of appellant in the United States to the value of $100,000. The Marshal levied upon the same property which he had seized in the prior contempt proceeding. The order was served upon appellant personally by Consul Orr on the 21st of January, 1929, at Paris, France. After the levy there was a publication once a week for six consecutive weeks in the Washington Evening Star.

In each case counsel for appellant appeared specially and moved to vacate the order to show cause and proceedings thereunder, alleging the same to be in conflict with the Fourth, Fifth, Sixth, and Eighth Amendments to the Constitution. The motions were overruled. Whereupon, pleas were filed, on which the United States joined issue or demurred. The cases were heard together, and a fine of $30,000, and costs, adjudged in each case, to be satisfied out of the property seized, unless otherwise paid.

Counsel for appellant, both in brief and argument, have displayed a wealth of learning and great industry in the presentation of their very numerous contentions, but, in our view, the controlling question is whether it is Constitutional for Congress to authorize the service of a subpœna upon a citizen of the United States residing abroad. In determining this fundamental question, we should construe the statute, "if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score." United States v. Jin Fuey Moy, 241 U. S. 394, 401; Baender v. Barnett, 255 U. S. 224, 226; Panama R. R. Co. v. Johnson, 264 U. S. 375, 396; Michaelson v. United States, 266 U. S. 42, 64. In the Sinking-Fund cases, 99 U. S. 700, 718, the Court said:

"Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule."

Again, in Atkin v. Kansas, 191 U. S. 207, 223, the court said:

"We are reminded by counsel that it is the solemn duty of the courts in cases before them to guard the constitutional rights of the citizen against merely arbitrary power. That is unquestionably true. But it is equally true—indeed, the public interests imperatively demand—that legislative enactments should be recognized and enforced by the courts as embodying the will of the people, unless they are plainly and palpably, beyond all question, in violation of the fundamental law of the Constitution."

That the citizen, wherever he may be, and so long as he sustains that relationship, owes an absolute and permanent allegiance to his government, may not be denied. Carlisle v. United States, 16 Wall. 147, 154. He is entitled to the protection of his government, and in return the government is entitled to his unqualified allegiance. Minor v. Happersett, 21 Wall. 162, 166; Luria v. United States, 231 U. S. 9, 22.

In Rose v. Himely, 4 Cranch 241, 279, Mr. Chief Justice Marshall said:

"It is conceded, that the legislation of every country is territorial; that beyond its own territory, it can only affect its own subjects or citizens."

In The Apollon, 9 Wheat. 362, 370, the court, speaking through Mr. Justice Story, said:

"The laws of no nation can justly extend beyond its own territories, except so far as its own citizens. They can have no force to control the sovereignty or rights of any other nation, within its own jurisdiction."

In United States v. Bowman, 260 U. S. 94, it was held that a criminal statute dealing with acts that are directly injurious to the Government and capable of perpetration without regard to particular locality, is to be construed as applicable to citizens of the United States upon the high seas or in a foreign country, though there be no express declaration to that effect; that citizens of the United States while in a foreign country are subject to penal laws passed by the United States to protect itself and its property. In

United States v. Bennett, 232 U. S. 299, it was held that the Government of the United States as a nation by its very nature benefits the citizen and his property wherever found, and that no imaginary barrier shuts that Government off from exerting the powers which inherently belong to it by virtue of its sovereignty. In Cook v. Tait, 265 U. S. 47, it was ruled that Congress has power to tax income received by a citizen of the United States domiciled abroad from property situated abroad.

In Bartue and Duchess of Suffolk's Case, 2 Dyer's Rep. 176, b, 73 Eng. Reprint 383, and in Knowles v. Luce, Moore's Rep. #(K. B.) 109, 72 Eng. Reprint 473, it was held that at common law the sovereign has a right to recall the subject or citizen from abroad and may seize and forfeit all his property if he refuses to return.

We think it logically follows from the foregoing authorities that a citizen of the United States, though residing abroad, is nevertheless amenable to process issuing under a statute requiring him to appear as a witness in a court of the United States, and that, if he receives reasonable notice and reasonable travelling and attendance fees, due process is satisfied. It is inconceivable that a citizen witness may clog the wheels of justice by crossing the international border and that the Government should be powerless to summon him to return and to subject him to a penalty if, without cause, he fails to respond to the summons.

The Act of 1926 makes it the duty of a citizen, residing abroad, to return when wanted as a witness, and prescribes the notice to be served upon him. In serving that notice the consul exercises no sovereign power. His notice is informative and not coercive. Mr. Chief Justice Taft, speaking for the Court in United States v. Bowman, 260 U. S. 94, 102, said:

"Clearly it is no offense to the dignity or right of sovereignty of Brazil to hold them for this crime against the government (of the United States) to which they owe allegiance."

So here, it is no offense to the dignity or right of sovereignty of France merely to notify an American citizen residing therein that he is wanted as a witness in a court of the United States. The consul who served the subpœna

was not acting in his consular or diplomatic character, but as a mere messenger of the Government of the United States. The Act might as well have authorized the Court to designate a messenger to serve the notice. Moreover, the record discloses no complaint on the part of France.

But appellant contends that the Act does not provide any valid method of acquiring jurisdiction to render a personal judgment against the defendant and his property; hence, that all proceedings authorized by the Act leading to the judgment against person and property, and all subsequent proceedings, are void as lacking due process.

Contempt proceedings "are sui generis—neither civil actions nor prosecutions for offenses, within the ordinary meaning of those terms—and exertions of the power inherent in all courts to enforce obedience, something they must possess in order properly to perform their functions. * * * While contempt may be an offense against the law and subject to appropriate punishment, certain it is that since the foundation of our government proceedings to punish such offenses have been regarded as sui generis and not 'criminal prosecutions' within the Sixth Amendment or common understanding." Myers v. United States, 264 U. S. 95, 103, 104.

In Ex parte Grossman, 267 U. S. 87, 117, the court said:

"Contempt proceedings are sui generis because they are not hedged about with all the safeguards provided in the bill of rights for protecting one accused of ordinary crime from the danger of unjust conviction."

In Cooke v. United States, 267 U. S. 517, the court reaffirmed the ruling in Ex parte Terry, 128 U. S. 289, that when a contempt is committed in open court, it may be adjudged and punished summarily upon the court's own knowledge of the facts, without further proof, without issue or trial, and without hearing an explanation of the motives of the offender. The court then said (p. 536):

"When the contempt is not in open court, however, there is no such right or reason in dispensing with the necessity of charges and the opportunity of the accused to present his defense by witnesses and argument. The exact form of the procedure in the prosecution of such contempts is not

important. * * * Due process of law, therefore, in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation.

In the present case, proof was made that appellant did not respond to either of the subpœnas. Thereupon the court, in each case, issued an order directing appellant to appear at a fixed time to show cause why he should not be adjudged guilty of contempt and punished accordingly; and the order in each case also directed that the property of appellant "within the United States, of the amount and value of $100,000, be levied upon and seized by the Marshal of this Court *and held to satisfy any judgment that may be rendered* against the said Harry M. Blackmer in this proceeding." (Italics ours.)

In No. 5131 the order to show cause did not set forth the basis of the order. In No. 5132 appellant was specifically informed that he should show cause why he should not be adjudged guilty of contempt in neglecting, failing and refusing to obey the subpœna, theretofore issued by the court and served upon him, to appear before the court as a witness in the case of United States v. Harry F. Sinclair and Albert B. Fall. In the circumstances of this case we do not think appellant is in a position to complain because the charge in No. 5131 was not more specific. To determine whether a defendant has been sufficiently informed of the charges against him, the reviewing court may examine the entire record. Schwartz v. United States, 217 F. 966. Mr. Blackmer is a lawyer, was represented by counsel throughout, and the record leaves no room for doubt that he fully understood that the rule to show cause in each case was based upon his failure to respond to the subpœnas.

Moreover, at the trial of the contempt cases, evidence was introduced by counsel for appellant in supposed extenuation of the offense in each case and in mitigation of penalty. This amounted to a general appearance and appellant will not now be permitted to challenge the sufficiency of the rules to show cause.

In each instance property of the value of $100,000 was attached to satisfy any judgment that might be rendered

against appellant. As provided by Sec. 5 of the Act, appellant received personal notice in each instance, and in each instance there was service by publication as required by Sec. 6 of the Act. In each instance, the charge of recusancy against him having been sustained, the court, as required by Sec. 7 of the Act, adjudged him guilty of contempt and imposed the only penalty provided by that section, namely, a fine of not exceeding $100,000—to wit, $30,000 in each instance. These judgments were to be fully satisfied out of the property attached. It is, we think, plain that there has been no attempt in these cases to obtain a judgment in personam to be enforced in any other court than the court below or in any other respect than upon the property under the control of that court. The proceedings were quasi in rem, in which class of cases a judgment binds nothing but the property attached. Cooper v. Reynolds, 10 Wall 308; Pennoyer v. Neff, 95 U. S. 714, 730. The fact that Congress theretofore had not authorized such a procedure does not militate against the existence of the power to do so. In Big Vein Coal Co. v. Read, 229 U. S. 31, it was ruled that a Circuit Court of the United States has no jurisdiction to issue an order of attachment in a case where no personal service can be had upon the defendant and where there has been no personal appearance in the action, but the court was careful to say: "If Congress had intended any such radical change, it would have been easy to have made provision for that purpose, and doubtless a method of service by publication in such cases would have been provided."

It is not necessary, therefore, to determine whether Sec. 4 of the Act authorizes a personal judgment in the absence of the recusing witness nor whether the prescribed procedure would constitute due process. We are convinced that Congress would have authorized the procedure under Sec. 5 irrespective of Sec. 4. Pollock v. Farmers' Loan & Trust Co., 158 U. S. 601, 635-636; El Paso & N. E. Ry. v. Gutierrez, 215 U. S. 87, 96; Southwestern Oil Co. v. Texas, 217 U. S. 114, 121.

Appellant advances the contention that the search and seizure of property authorized by the Act is unreasonable and violative of the Fourth Amendment. Reasonably construed, the Act does not contemplate or authorize an un-

reasonable search and seizure, and the records in these cases fail to disclose such a search and seizure. The Marshal's return in each case recites that he executed the order of the court "by levying upon and seizing One Hundred Thousand ($100,000) Dollars in United States First Liberty Loan Bonds at the par value of $100,000, the property of the said defendant, Harry M. Blackmer."

It further is contended that "by excluding defendants in criminal prosecutions from the right to extra-territorial subpœnas the Act violates that part of the Sixth Amendment of the United States Constitution providing that the accused in such actions shall have compulsory process for obtaining witnesses in his favor."

Sec. 1 of the Act provides that if a citizen of the United States while abroad refuses to respond to letters rogatory, the court out of which such letters issued may authorize the issuance of a subpœna for such citizen to appear before the court at the time and place designated. This section is available to either party in a civil action and to the defendant in a criminal action or in a contempt proceeding. Because of the provisions of the Sixth Amendment that the accused is entitled to be confronted with the witnesses against him, the United States is not entitled to letters rogatory in a criminal case. The defendant in such a case may have such letters and, if the witness refuses to respond, may have a subpœna. He has, therefore, substantially equal process to that accorded the United States. This is all that is required. In United States v. Heinze, 218 U. S. 532, the contention was advanced that the defendant in a criminal case was denied due process and equal protection of the law because he was not accorded rights to appeal equal to those accorded the prosecution. The contention was rejected.

In Blair v. United States, 250 U. S. 273, the plaintiffs in error had been adjudged guilty of contempt because of their refusal to obey a court order directing them to answer certain questions before a Federal grand jury, and committed to the custody of the Marshal until they should comply. On their refusal to answer the questions, the grand jury made a written presentment of the facts to the District Court, with the prayer that they might be dealt with as contumacious witnesses. Counsel for the witnesses

contended that the Corrupt Practices Act of June 25, 1910 (36 Stat. 822), was unconstitutional and void, and, hence, that the grand jury lacked authority to investigate supposed violations of that Act. In affirming the judgment, Mr. Justice Pitney for the Supreme Court said:

"In truth it is in the ordinary case no concern of one summoned as a witness whether the offense is within the jurisdiction of the court or not."

So here, it was the duty of appellant to respond to the summons, and it was not his function but that of the defendants in the criminal case to challenge the validity of the proceedings.

It is further contended that the Act violates the guarantee of due process under the Fifth Amendment "because it is arbitrary, capricious, unreasonable, indefinite and uncertain": first, because it makes "ownership of 'non-offending' property condition precedent to guilt of a criminal offense." Sec. 5, as we have already ruled, authorizes the quasi in rem proceeding whenever property of the recusing witness may be attached, but the contumacy of the witness depends not upon the ownership of property but upon the question whether he, without cause, failed to respond to the witness subpœna. Knowing that so long as the recusing witness remained abroad he could not be subjected to punishment, except through a fine levied upon his property located here, we think the provision was within the power of classification of Congress. As the court below observed:

"The provision of the statute for the sequestration of the property of such a witness within the territorial jurisdiction of the United States is analagous to the sequestration of property, not infrequently made, of a party litigant who otherwise, by the simple expedient of remaining out of the territorial jurisdiction of the court, may defeat the purposes of a suit or action."

Sec. 5 of the Act authorized the court to direct "that the property of the recusing witness, at any place within the United States, or so much thereof in value as the court may direct shall be levied upon and seized * * *, to be

held to satisfy any judgment that may be rendered against such witness in the proceeding so instituted." Under Sec. 7, the limit of the fine is $100,000. It must be assumed, therefore, that the court, in the exercise of a reasonable discretion, would not direct the attachment of more property than necessary to liquidate the authorized fine. The circumstances of each case also would be an element in the determination by the court of the amount of the property to be attached.

Since personal service was had in the present cases, it is unnecessary to consider Sec. 8.

Appellant further contends that the subpœnas directed to him were not issued upon proper showing, and, hence, violative of due process under the Fifth Amendment. Sec. 1 of the Act authorizes the court to issue a subpœna "upon proper showing" in cases where a witness had neglected to respond to letters rogatory. Sec. 2 provides that whenever the attendance, at the trial of any criminal action, of a witness who is beyond the jurisdiction of the United States, "is desired by the Attorney General or any assistant or district attorney acting under him, the judge of the court before which such action is pending, or who is to sit in the trial of the same, may, upon proper showing, order that a subpœna issue, * * *." It may be observed at the outset that it is for the court, in the exercise of a sound discretion, to determine whether a proper showing has been made, and not the recusing witness. That a proper showing was made in the present case is, we think, too plain to admit of doubt.

The Act of 1926 contains no requirement that the subpœna contain notice that it was issued under authority of the Act. It is to be presumed, therefore, that the ordinary form of subpœna was to be issued. Moreover, the records in these cases disclose that appellant had advised with counsel and was thoroughly familiar with the provisions of the Act. He not only was chargeable with knowledge of the Act, but was possessed of actual knowledge of the Act.

Appellant further contends that "the tenders of witness fees were insufficient and appellant was not bound to obey the subpœnas." In each instance the court, in conformity with the statute, fixed the amount to be tendered to appellant "for his necessary expenses in travelling to and from Washington, D. C., and for his attendance at Court," at

$500. In serving the first subpœna, Consul Orr tendered the $500 "for travelling expenses"; but in serving the second subpœna for attendance at the same trial, Consul Davis simply tendered $500; and Consul Orr, in serving the subpœna in No. 5132 tendered $500 without any limitation. Appellant in each instance, so far as the records disclose, refused each tender without asking any questions and without any protest. There is no evidence that the amounts of the tenders were insufficient. If appellant did not understand what they were for, he was lacking in intelligence. Being a lawyer and actually familiar with the provisions of the Act, it will be presumed that he knew the purpose and scope of the tenders.

The contention is made that there was an abandonment of the seizure in No. 5131 by the seizure of the same property in No. 5132, and authorities cited to the effect that if in a particular action an alias order is issued before property taken under the original writ is disposed of, the alias order destroys the lien acquired by the original writ. These cases are not in point, for here there were two different seizures in two different cases upon two different causes of action. The two different levies in these cases are not inconsistent with an intent on the part of the Government to maintain each.

In No. 5132 appellant was subpœnaed to appear on April 2, 1928, "and not depart the court without leave of the court or district attorney." The trial was continued and did not commence until April 9, 1928, when appellant was called as a witness and did not respond. He now contends that he was not subpœnaed to attend the court on April 9, 1928, and, hence, that all proceedings in No. 5132 under his alleged neglect and refusal to appear as a witness are null and void. The record shows that the Sinclair-Fall case was set for re-trial on April 2, 1928. For cause shown, the trial court extended the time for commencement to April 4th and again until April 9th, 1928. Had appellant obeyed the subpœna and presented himself on April 2, 1928, as required, he would have learned of the continuance and would not have been given leave to depart by either the court or the district attorney. As the court below observed, "What happened on April 2nd in the way of continuing the hearing until a later date was none of his concern."

Finally, appellant contends that "the fines adjudged in these cases, totalling the sum of $60,000 ($30,000 in each

case) are so grossly excessive as to amount to deprivation of property without the due process of law guaranteed by the Fifth Amendment."

When appellant was called as a witness on October 17, 1927, his counsel appeared and attempted to explain why he was not present. In their brief they state that it was desired to give assurance that appellant had no contempt for the court, nor for the judge thereof, nor for the valid laws of the United States; that appellant, in good faith, believed and had been advised that the law and procedure thereunder violated his constitutional rights as a citizen.

In support of appellant's motions to vacate the orders to show cause, his counsel filed appellant's affidavit, in which appellant stated "that in the year 1924 he left the City of Denver, State of Colorado, United States of America, resigning his position as Chairman of the Board of Directors of the Midwest Refining Company, and retired from business, taking up his residence at Hotel Plaza Athenee, in the City of Paris, France (although retaining his American citizenship); that thereafter and in the year 1926 he formed the intention of residing permanently abroad and then disposed of his former home in the said City of Denver, since which time he has at all times resided abroad, spending his time in England, in France and elsewhere."

At the trial of the contempt cases, George Gordon Battle, Esquire, of New York City, and Eugene D. Millikin, Esquire, of Denver, Colorado, appeared as counsel for appellant. During the course of the trial, Mr. Battle was called as a witness on behalf of the defendant (appellant here). He testified that he was in Paris, France, in the summer of 1927, just after the subpœnas had been served on Mr. Blackmer (dates of service: May 27, 1927, and June 7, 1927), and discussed with him the constitutionality and procedure under the Walsh Act (Act of July 3, 1926, 44 Stat. 835) and as to what his action should be with respect to responding to the subpœna; that the witness informed Blackmer that he (the witness) had carefully considered the question of the constitutionality of the Act and had obtained the opinions of several prominent lawyers concerning it; that he "advised Mr. Blackmer that the Act was unconstitutional, that it was void, and

that the whole proceedings under it would be void." On cross-examination, the witness stated that he was Blackmer's counsel "considerably before this subpœna went out. I knew that letters rogatory were issued to take his testimony in the suit in Wyoming." Over objection of counsel for appellant, the witness was questioned concerning the suit of United States v. Mammoth Oil Co. (5 F. (2d) 330; 14 F. (2d) 705; 275 U. S. 13), in which the United States was seeking civil remedy on the same question on which it sought criminal remedy in the conspiracy case in which appellant was subpœnaed. Mr. Battle testified: "As Mr. Blackmer's counsel I am familiar with the fact that in the bill of the Mammoth Oil Company Case, Mr. Sinclair was charged amongst other things, with conspiracy with Mr. Fall, as in the criminal cases; that there was an application made to the United States District Judge at Cheyenne to take the testimony of Mr. Blackmer on the issues, amongst others, of conspiracy to defraud the United States; that letters rogatory were issued by Judge Kennedy, of that court, addressed to a French Court to examine Mr. Blackmer before them on certain questions propounded by the Government touching this alleged conspiracy;" that when letters rogatory were exposed to appellant and the questions propounded to him by the French judge of the French Court, he (appellant) answered to his name, gave his age, and refused to answer any further questions. The witness was asked whether appellant then knew of the provisions of the Act, and he replied, "I told him the provisions of the Act." The witness further testified:

"I would also say in regard to the letters rogatory that Mr. Blackmer depended upon the opinion of French counsel that he was not under any obligation to answer the questions addressed to him in the French court."

The purpose of the testimony of Mr. Battle that appellant was advised by eminent counsel that the Act was unconstitutional was in supposed extenuation of the offense and in mitigation of the penalty. Sinclair v. United States, 279 U. S. 749, 766. Blackmer's good faith, therefore, was involved. Tornanses v. Melsing, 106 F. 755. As bearing upon his good faith, his attitude with respect to the letters

rogatory in the civil suit was important. It is clearly recognized that the giving of testimony is a public duty. Blair v. United States, 250 U. S. 273, 281.

It is further urged that the failure to respond to the subpœna at the re-trial (R., No. 5132) resulted in no inconvenience to the Government because other testimony became available for use at that trial, and, hence, that appellant's conduct was not disrespectful to the court. It ill becomes appellant, after he has persistently manifested an intent to evade his public duty and embarrass the Government, to say that his conduct was not contemptuous of the court because other evidence was available to the Government. The Government prevailed in the civil suit, notwithstanding his refusal to testify (Mammoth Oil Co. v. United States, 275 U. S. 13), but it did not prevail in the criminal case. The result might have been different had appellant fulfilled his duty.

Under the provisions of the statute, the court might have fixed the fine at $100,000 in each case. It was fixed at $30,000 in each case. Mr. Blackmer left the United States in 1924, when it must have been apparent to him that his testimony might and probably would be sought by the Government in the attempt to uncover the fraud and corruption culminating in the oil and gas lease to the Mammoth Oil Company. Later, letters rogatory were issued, but Blackmer refused to testify and could not be coerced. His hostile attitude and his disinclination to fulfill his public duty became apparent. When his testimony was sought in the criminal case involving substantially the came facts, he refused to respond to the subpœnas, and attemped to justify his conduct by challenging the constitutionality of the Act under which the subpœnas were issued. He knew, or should have known, that it was as much his patriotic duty to yield his testimony in the Government's efforts to uncover fraud and punish the guilty as it would be his duty to bear arms in defense of his country. Indeed, the injury to the Government resulting from the refusal of a material witness to testify might be infinitely greater than that resulting from his refusal to bear arms, and, yet, the citizen "may be compelled, by force if need be, against his will and without regard to his personal wishes or his pecuniary interests, or even his religious or political convic-

tions, to take his place in the ranks of the army of his country and risk the chance of being shot down in its defense." Jacobson v. Massachusetts, 197 U. S. 11, 29.

Doubtless Congress considered the possible serious consequences which might result from the refusal of a witness to respond to a subpœna when it authorized a penalty of $100,000 for each offense. It had a right to take into consideration that ordinarily only a man of means could afford the luxury of abandoning his business and practically expatriating himself by taking up his residence abroad. A small fine in such circumstances would have no deterrent effect. In the present cases, the records indicate that Mr. Blackmer is a man of extensive business interests and large means. Considering the records as a whole, we are clearly of the view that the trial court in assessing the fines did not abuse its discretion.

Other contentions have not been overlooked, but they have not been found of sufficient merit to warrant discussion.

The judgments are affirmed.

Affirmed.

Endorsed: Nos. 5131 and 5132. Harry M. Blackmer, Appellant, v. United States. Opinion of the Court per Mr. Justice Robb. Court of Appeals, District of Columbia. Filed April 6, 1931. Henry W. Hodges, Clerk.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA, APRIL TERM, 1931

Monday, April 6th, A. D. 1931.

No. 5132

HARRY M. BLACKMER, Appellant,

v.

UNITED STATES

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia,

and was argued by counsel. On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed.

Per Mr. Justice Robb, April 6, 1931.

Mr. Justice Cox, of the Supreme Court, D. C., sat in this case in the place of Mr. Chief Justice Martin.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 110, inclusive, constitute a true copy of the transcript of Record and proceedings of the said Court of Appeals in the case of Harry M. Blackmer, Appellant, vs. United States, No. 5137, April Term, 1931, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Court of Appeals, at the City of Washington, this Fifteenth day of May, A. D. 1931.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. (Seal Court of Appeals, District of Columbia.)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 19, 1931

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.